

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184844

DATE: February 2, 1976

MATTER OF: W. E. Yoder, Inc.

DIGEST:

Protest against award of contract to Small Business Administration under section 8(a) of Small Business Act is denied since records show that set-aside determination was reasonable exercise of administrative discretion.

This protest involves the Navy's determination to award a contract to the Small Business Administration (SBA) under section 8(a) of the Small Business Act, 15 U.S.C. 637(a) (1970 ed.). W. E. Yoder, Inc. (Yoder) contends that, because it has been very active in bidding for this type of contract (maintaining and inspecting railroad and crane trackage at the U.S. Navy Base, Philadelphia, Pennsylvania), and because such contracts have been competitively bid in the past, the procurement's removal from the competitive arena "will do Yoder irreparable harm."

The Navy reports that it had planned to advertise this procurement when the SBA proposed that the project be performed under section 8(a) of the Small Business Act. 15 U.S.C. 637(a) (1970 ed.). The proposed contractor is Diaz Contracting Inc., which company presently is performing the work as obtained through formal advertising. Since this work is being performed in a satisfactory manner, the Navy states that it has no objection to the 8(a) award or to the selection of the proposed contractor.

In addition, the record shows that SBA determined that the proposed 8(a) set aside "will not have a sizeable impact upon the protester's/ company." Under its standard operating procurements (SOP 60-41, Revision 1), SBA will not seek to obtain an 8(a) award if such action may result in "major hardship" to a small business firm. Since Diaz is the incumbent contractor and would not be displacing a small business, SBA concluded that the set-aside was proper in accordance with its SOP.


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Section 8(a) of the Act empowers the SBA to enter into contracts with any Government agency having procurement powers, and the contracting officer of such agency is authorized "in his discretion" to let the contract to SBA "upon such terms and conditions" as may be agreed upon between SBA and the procuring agency. 53 Comp. Gen. 143 (1973). Under regulations issued pursuant to the above statutory authority, the SBA has determined that firms which are owned or controlled by economically or socially disadvantaged persons should be the beneficiaries of the 8(a) program. Section 124.8-1(b) of title 13 of the Code of Federal Regulations (CFR). We have recognized that the determination to initiate a set-aside under section 8(a) and to dispense with competition is a matter within the sound discretion of the SBA and the contracting agency. See Eastern Tunneling Corp., B-183613, October 9, 1975, 75-2 CPD 218, and the cases cited therein. Here it appears to us that the determination to set-aside this procurement was a reasonable exercise of administrative discretion and therefore we have no basis to object to the proposed award.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States