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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

*[Protest of Determination to set Aside Contract Under SB
8(a) Program]*

FILE: B-201711

DATE: January 30, 1981

MATTER OF: Compton Associates, P.C.

DIGEST:

1. Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and Small Business Administration and is not reviewed by GAO absent showing of fraud or bad faith on part of Government officials.
2. Issues raised concerning contractor's eligibility for assistance under section 8(a) of Small Business Act and contractor's ability to perform are basically matters for determinations by Small Business Administration (SBA) and not GAO; because of broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned absent showing of fraud or bad faith on part of Government officials.

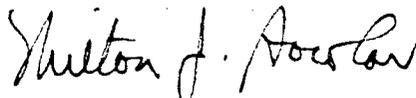
Compton Associates, P.C. (Compton), protests the decision to set aside a contract to provide occupational health services for the Law Enforcement Assistance Administration (LEAA) under the Small Business Administration's (SBA) 8(a) program and the proposed award of that contract to the National Institute for Advanced Studies (NIAS). Compton contends that, in all fairness, NIAS should not be eligible for this proposed 8(a) award because NIAS has already received nearly \$8 million in 8(a) contracts over the past 5 years and, therefore, LEAA should conduct a competitive procurement for these services because NIAS has never performed a contract which calls for the furnishing of occupational health services.

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Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757, authorizes the SBA to enter into contracts with any Government agency with procurement powers and to arrange for the execution of such contracts by letting subcontracts to socially and economically disadvantaged small businesses. Agency contracting officers are authorized in their discretion to let contracts to SBA. In view of this discretionary authority, we do not generally review agency determinations to set aside contracts for section 8(a) awards unless it appears that the determinations resulted from fraud or bad faith on the part of Government officials. Industrial Maintenance Services, Inc., B-199665, August 26, 1980, 80-2 CPD 153, and E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394. There is no allegation of fraud or bad faith in this case. Consequently, we have no basis to consider Compton's objection to the decision to set aside this procurement under the 8(a) program.

Similarly, the issues raised by Compton concerning NIAS's eligibility for assistance and its ability to perform are basically matters for determination by SBA and not this Office. Our review of SBA determinations under the 8(a) program is limited to determining whether SBA has followed its own regulations. Because of the broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned absent a showing of fraud or bad faith on the part of the Government officials. Maintenance, Incorporated, B-199854, August 27, 1980, 80-2 CPD 155, and Black & Decker (U.S.), Inc., B-196406, August 25, 1980, 80-2 CPD 145. There is no indication that the SBA failed to comply with its own regulations in making the award to NIAS and neither fraud nor bad faith on the part of any Government official has been alleged.

Accordingly, the protest is dismissed.



Milton J. Socolar
General Counsel