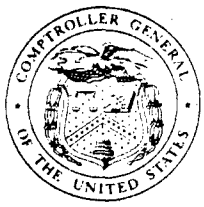
19850 Handell

DECISION



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

FILE: B-205077 DATE: October 26, 1981

MATTER OF: Microtech Industries, Inc.

DIGEST:

1. The determination whether to set aside a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and SBA and will not be reviewed by GAO absent a showing of fraud or bad faith on the part of Government officials.

2. Issues concerning contractor eligibility for subcontract award under section 8(a) of the Small Business Act are matters for determination by SBA and not GAO; because of broad discretion afforded SBA by statute, such judgmental decision will not be questioned absent showing of fraud or bad faith on part of Government officials.

Microtech Industries, Inc. (Microtech), protests the Nuclear Regulatory Commission's issuance of solicitation No. ADM-81-386, for publication, distribution and inventory services, under the Small Business Administration's (SBA) 8(a) program. In addition, Microtech objects to any negotiation or award of a contract to Raven Company (Raven), alleging that Raven is not eligible for award under the 8(a) program because its sales volume exceeds $20 million a year.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979), authorizes SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let contracts to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to set aside procurements under

019006 116720

section 8(a) unless there is a showing of bad faith or fraud on the part of Government officials. See Maintenance, Incorporated, B-199854, August 27, 1980, 80-2 CPD 155; E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394. No such showing has been made here.

As to Microtech's allegation that Raven is not eligible for an award under the 8(a) program, the matter is for determination by the SBA and not this Office. Black & Decker (U.S.), Inc., B-196406, August 25, 1980, 80-2 CPD 145. SBA has broad discretion in managing the 8(a) program and its judgmental decisions regarding eligibility will not be questioned absent a showing of bad faith or fraud by Government officials. See Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39; American Electronics Laboratories--Reconsideration, B-199392.2, September 2, 1980, 80-2 CPD 166; Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132.

Accordingly, the protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel