

DOCUMENT RESUME

02985 - [A2013089]

[Protest against Small Business Set-Aside]. B-189352. July 13, 1977. 2 pp.

Decision re: Maritime Maintenance and Labor Suppliers, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Small Business Administration.

Authority: Small Business Act, sec. 8(a) (15 U.S.C. 637(a)).

B-185055 (1976). B-186066 (1976).

Bidder protested the decision of the Small Business Administration (SBA) to set aside procurement under section 8(a) of the Small Business Act. The determination to remove procurement from competition was a matter for the contracting agency and the SBA. It was not subject to GAO jurisdiction without a showing of fraud or bad faith on the part of Government officials. (Author/DJM)

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DECISION

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

FILE: B-189352

DATE: July 13, 1977

MATTER OF: Maritime Maintenance & Labor Suppliers, Inc.

DIGEST:

Determination to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA, and is not subject to review by GAO in absence of showing of fraud or bad faith on part of Government officials.

Maritime Maintenance & Labor Suppliers, Inc. (Maritime), a small business, protests the decision of the Small Business Administration (SBA) to remove from competition and enter into a contract for services at the Charleston, South Carolina, Naval Base, under authority of the "8(a) program" (a program designed to assist small business concerns owned and controlled by socially or economically disadvantaged persons).

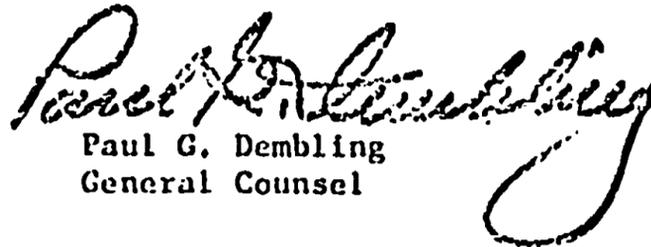
Maritime, a non-8(a) company, requests our Office to investigate what it contends were improper procedures followed by the SBA Atlanta Regional Office and contends that it would be detrimental to small businesses to withdraw the requirement from the competitive market. Maritime argues that the criteria used by SBA in making the required "impact analysis" was improper and that the removal from competition of the services in question would result in a hardship to its firm.

Our Office no longer reviews decisions to set aside procurements under the 8(a) program in view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. § 637(a) (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to 8(a) firms. See Automation Information Data Systems, Inc., B-185055, June 15, 1976, 76-1 CPD 377; Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. Pursuant to that decision, we will not review protests against 8(a) set-asides unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as to necessarily imply bad faith. Whether or not the procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide.

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Maritime has not alleged or demonstrated fraud or bad faith on the part of any Government officials in deciding to set aside the procurement under the 8(a) program.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel