



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

Mr. Donohue

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OFFICE OF GENERAL COUNSEL

B-200177

SEP 29 1980

Lu-San Enterprises, Inc.  
144 Van Dyke Street  
Brooklyn, New York 11231

DLG06269

Attention: Mr. Joseph DiMare  
Vice-President

Gentlemen:

This is in response to your letter of August 25, 1980, in which you requested our consideration of the Department of the Army's decision to set aside a contract for the procurement of custodial services at Fort Monmouth, New Jersey for socially and economically disadvantaged contractors under section 8(a) of the Small Business Act. This set-aside, you assert, will have an undue impact upon your business. DLG04089

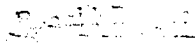
As we advised your Mr. Phillip Tursi on September 17, 1980, section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757, authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procurement 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. E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394; American Electronic Laboratories, Inc., B-199390, July 23,

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1980, 80-2 CPD \_\_\_\_\_. Since there is no allegation of fraud or bad faith in this case, we have no basis to consider your objection to the set-aside decision. We are, however, referring your correspondence to our audit staff for possible consideration in its ongoing review of the 8(a) program.

Sincerely yours,

  
Ronald Berger  
Assistant General Counsel

Director, CEDD - Henry Eschwege

Assistant General Counsel - Ronald Berger  
Ronald Berger

Lu-San Enterprises, Inc. (B-200177)

Attached is protest correspondence filed by Lu-San Enterprises, Inc., and our letter of response declining to consider the protest.

Pursuant to our discussion with John Landicho, we are referring the matter to you for possible consideration in your review of the section 8(a) program.

Attachments - 2