

**DECISION**

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

**FILE:** B-218590.3

**DATE:** July 5, 1985

**MATTER OF:** E.C. Corporation--Reconsideration

**DIGEST:**

1. GAO will not review an agency determination not to procure services under section 8(a) of the Small Business Act where the government estimate of the in-house cost was lower than the price solicited from a firm eligible under section 8(a), absent a showing of possible fraud or bad faith by procurement officials.
2. Prior decision is affirmed on reconsideration where the protester does not show that it contains any errors of fact or law.

E.C. Corporation (E.C.) requests reconsideration of our decision in E.C. Corporation, B-218590.2, June 7, 1985, 85-1 C.P.D. ¶ \_\_\_\_\_. In that decision, we dismissed E.C.'s protest against the Defense Logistics Agency's (DLA) determination not to procure base support services under section 8(a) of the Small Business Act. A DLA cost comparison revealed that the government estimate of in-house cost was lower than the price solicited from E.C. (a firm eligible under section 8(a)), and GAO does not review such a determination absent a showing of fraud or bad faith by procurement officials. Building Services Unlimited, Inc., B-213569, Feb. 6, 1984, 84-1 C.P.D. ¶ 148. E.C. did not make such a showing.

We affirm our prior decision.

E.C. contends that the facts in this case are distinguishable from those in Building Services Unlimited, Inc., B-213569, supra, cited in the initial decision. E.C.

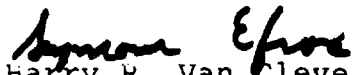
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argues that the instant case does not concern agency discretion in determining whether to contract under section 8(a) of the Small Business Act, as it did in the Building Services case, because the solicitation was allegedly issued to E.C. only after the contracting officer had decided that the procurement would be set aside pursuant to section 8(a). While it is true that it was decided prior to the cost comparison to contract under the 8(a) program, the cost comparison was nonetheless conducted to determine whether the services should be performed in-house or through the 8(a) program. Thus, the essential facts in this case are indistinguishable from those in Building Services. See also C.S. Smith Training, Inc., B-203108, June 8, 1981, 81-1 C.P.D. ¶ 463.

E.C. argues that even if GAO requires a showing of possible fraud or bad faith upon which to base its review, E.C. has satisfied that requirement. In E.C.'s appeal of the cost comparison to DLA, it alleged that the "methodology of the evaluators seems to suggest at its worst a knowledge of the government staffing proposal and an intentional effort on the part of evaluators to raise E.C.'s proposal above that of the government."

The protester bears a heavy burden of proof when alleging bad faith on the part of government officials; it must show by virtually irrefutable proof that these officials had a specific and malicious intent to injure the protester. Ebonex, Inc., B-213023, May 2, 1984, 84-1 C.P.D. ¶ 495. Inference and supposition alone will not support a finding of bad faith. Ebonex, Inc., B-213023, supra. Since E.C.'s argument is based on inadequately substantiated suspicions, it has not met its burden of proof. Consequently, we will not review DLA's determination not to contract out under section 8(a). Building Services Unlimited, Inc., B-213569, supra.

Because E.C. has not shown that our prior decision contains any error of fact or law, it is affirmed.

*for*   
 Harry R. Van Cleve  
 General Counsel