

DECISION

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

FILE: B-185859

DATE: March 31, 1976

MATTER OF: Arcon Construction and Engineering Company

DIGEST:

1. General Accounting Office will not review determination by agency to cancel procurement set aside under section 8(a) of Small Business Act.
2. General Accounting Office will not consider protester's allegation of collusive bidding practices, since jurisdiction in such matters is committed exclusively to Attorney General and federal courts.

Arcon Construction and Engineering Company (Arcon) has protested the Energy Research and Development Administration's (ERDA) decision canceling solicitation No. 292-76-4, a procurement for the construction of a new cafeteria and remodeling of a building which was set aside under Section 8(a) of the Small Business Act (15 U.S.C. 637(a) (1970 ed.)). The firm also protests the follow-on solicitation issued for this requirement.

Section 8(a) authorizes the SBA to enter into contracts with any Governmental agency having procurement powers, and the contracting officer of such agency is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procuring agency. It is clear that a determination not to set aside a procurement for an 8(a) award is not subject to legal review by this Office. Whether or not a contract should be awarded to the SBA under section 8(a) is a matter for the agency and the SBA to decide. Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD ¶ 105. Accordingly, the protest involving cancellation of the 8(a) solicitation is dismissed.

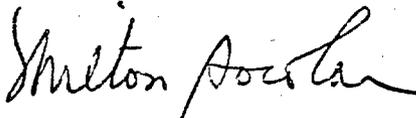
Regarding the follow-on solicitation to the canceled 8(a) set aside, Arcon alleges that the six contractors which bid on that solicitation may have been engaged in collusive bidding practices. Arcon notes that all six bidders were members of the same association of general contractors which allegedly encouraged ERDA to cancel the 8(a) set aside; that the association may have agreed to underwrite any member who may have been

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awarded a contract and that ERDA's employees may have divulged the amount of the Government's estimate to an association member prior to issuance of the solicitation. Federal Procurement Regulation (FPR) § 1-1.901 governs the reporting of possible anti-trust violations. In Society Brand, Inc., et. al., 55 Comp. Gen. 475. 75-2 CPD 327, we construed a similar Armed Services Procurement Regulations (ASPR) § 1-111.2 (1974 ed.) to require that evidence of collusive bidding in advertised procurements should be referred to the Attorney General by the procuring agency involved. We reached this conclusion because:

"the interpretation and enforcement of the criminal laws of the United States are functions of the Attorney General and the federal courts, and it is not within our jurisdiction to determine what does or does not constitute a violation of a criminal statute. (We note that * * * [the protester] may directly request the Department of Justice to consider the case if it believes criminal law violations are involved)." Society Brand, supra.

Accordingly, the protest involving alleged collusive bidding practices regarding the follow on solicitation is dismissed.

for 
Paul G. Dembling
General Counsel