

DECISION

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

27351

FILE: B-213569**DATE:** February 6, 1984**MATTER OF:** Building Services Unlimited,
Inc.**DIGEST:**

GAO will not review agency determination not to procure services under section 8(a) of Small Business Act because government estimate of in-house cost was lower than prices solicited from firms eligible under section 8(a), absent showing of fraud or bad faith by procurement officials.

Building Services Unlimited, Inc. (BSU), protests the Army's determination not to contract out for certain base operations support services. BSU points to alleged inaccuracies in a government cost estimate which the Army used as the basis for its determination that it would be less costly to perform the services in-house than it would be to procure the protester's services. BSU alleges that had the Army not based its decision on the resulting faulty and misleading cost comparison, BSU's cost proposal would have been lower than that of the government.

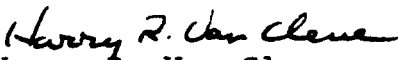
The Army has advised our Office that this cost comparison was conducted for the purpose of considering whether to contract out under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1) (1982). Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. However, by the terms of the act, a government contracting officer is authorized in his discretion to let the contract to SBA upon terms and conditions to which the agency and the SBA agree. Accordingly, contracting agencies have broad discretionary authority in this area, and GAO will not review a determination whether to contract under section 8(a), or the judgmental decisions involved, unless the protester presents prima facie evidence of fraud

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or bad faith on the part of procurement officials. Arawak Consulting Corporation, 59 Comp. Gen. 522 (1980), 80-1 CPD 404. Such evidence must include a showing that the agency had a specific intent to injure the protester. C.S. Smith Training, Inc., B-203108, June 8, 1981, 81-1 CPD 463. In particular, we have held that this standard of review is applicable to solicitations such as this one issued for the purpose of cost comparison with the government in-house estimate in order to determine whether to contract out under section 8(a). C.S. Smith Training, Inc., supra.

No such showing exists here. The protester does not allege fraud or bad faith, but merely that the Army's cost estimate was faulty and unreasonable. Thus, we have no legal basis to review the protest.

Accordingly, we are dismissing the protest without a complete agency report and without obtaining further comments from the parties to the protest. 4 C.F.R. § 21.3(g) (1983), as amended by 48 Fed. Reg. 1931 (1983).


Harry R. Van Cleve
Acting General Counsel