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DECISION



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

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FILE: B-218590.2

DATE: June 7, 1985

MATTER OF: E.C. Corporation

DIGEST:

GAO will not review agency determination not to procure services under section 8(a) of the Small Business Act because 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 fraud or bad faith by procurement officials.

E.C. Corporation (E.C.) protests the decision of the Defense Logistics Agency (DLA) to cancel request for proposals (RFP) No. DLA710-84-R-0290 and to perform in-house the base support services covered by the RFP. This decision was made after a cost comparison, performed in accordance with Office of Management and Budget Circular A-76 (Circular A-76), indicated that in-house performance would be cheaper than contracting out with the only offeror, E.C. The protester alleges that the government's cost proposal and the final cost proposal submitted by E.C. were based upon different performance work statements (PWS) in violation of the mandates of Circular A-76. Moreover, E.C. contends that if the same PWS had been used, E.C.'s final proposal would be over \$1 million less than the government's in-house estimate.

We dismiss the protest.

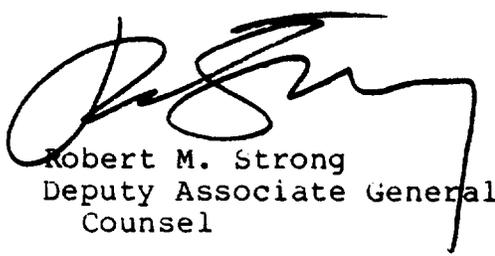
The protester has advised our Office that this cost comparison was conducted for the purpose of considering whether to contract out under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1) (1982). Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with 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

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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 or bad faith on the part of procurement officials. Arawak Consulting Corporation, 59 Comp. Gen. 522 (1980), 80-1 C.P.D. ¶ 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 C.P.D. ¶ 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). Building Services Unlimited, Inc., B-213569, Feb. 6, 1984, 84-1 C.P.D. ¶ 148.

No such showing exists here. The protester does not allege fraud or bad faith, but merely that the DLA'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(f)(4) (1985).



Robert M. Strong
Deputy Associate General
Counsel