

DECISION

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

FILE: B-207796

DATE: July 14, 1982

MATTER OF: Boston Window & Floor
Cleaning Co., Inc.**DIGEST:**

GAO does not review an agency decision to set aside or not set aside contracts for 8(a) award because of the broad discretion the Small Business Act has given contracting officials for this purpose, unless there is a showing of fraud or bad faith on the part of Government officials.

Boston Window & Floor Cleaning Co., Inc. (BW), protests the use of negotiation rather than competitive formal advertising for the procurement of janitorial services at the Barnes Building, Boston, Massachusetts. The services are being negotiated under the Small Business Administration (SBA) 8(a) program rather than by unrestricted competition. According to BW, its present contract for janitorial services at the Barnes Building was entered into based on an oral promise by the contracting officer that the subsequent contract would be awarded to the lowest bidder after formal advertising. BW contends that equity dictates that the Government carry out the promise because it has made expenditures in reliance on the promise.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979), authorizes SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The statute authorizes the procuring agency's contracting officer to award the contract to SBA "in his discretion." In light of the broad discretion given contracting officials by statute to let contracts to SBA, we do not review an agency decision to set aside or not to set aside contracts for 8(a) award, unless there is a showing of fraud or bad faith on the part of Government officials. Microtech Industries, B-206501,

March 2, 1982, 82-1 CPD 189. There is no allegation that the failure to advertise for the requirement as allegedly promised was fraudulent or an act of bad faith, nor is the alleged oral promise of future competition sufficient to override SBA's authority under the statute.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel