

**DECISION**

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

**FILE:** B-207167**DATE:** November 9, 1982**MATTER OF:** Harte-Hanks Communications, Inc.**DIGEST:**

Protest by a potential subcontractor of an award made by a prime contractor of the Navy is dismissed because the protest is not one which our Office will review under the guidelines established in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Specifically, we reject the protester's position that we should review the protest because the Navy allegedly approved the subcontract in bad faith; on the contrary, the approval was based on the Navy's endorsement--rightly or wrongly--of the prime contractor's assessment of the relative quality of the proposals for the subcontract work. Moreover, the Navy's decision not to review the protest and to approve the award of the subcontract while the protest was pending are not reasons for our review of the protest under the Optimum Systems, Inc., decision.

Harte-Hanks Communications, Inc. (Harte-Hanks), protests the award of a subcontract to Advo Systems (Advo) to administer the direct mailing of recruitment brochures for the Naval Reserve Occupant Mailing Program. The subcontract was awarded by Ted Bates Advertising Agency (Ted Bates), the prime contractor for administration of the program, under a cost-reimbursement contract awarded by the Navy. The protest is dismissed because it does not fit within the guidelines established by our decision in Optimum Systems, Inc., discussed below.

Harte-Hanks' proposal in response to Ted Bates' request for proposals contained the lowest price, but the protester states that Ted Bates selected Advo's proposal for three reasons: (1) anticipated heavy volumes of mailings caused Ted Bates to want to continue with Advo, which, as the incumbent subcontractor, had performed satisfactorily in the past; (2) Harte-Hanks' lower price

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was so low as to suggest "lower quality"; and (3) Advo, unlike Harte-Hanks, maintained its national mailing list on a central computer. The Navy had subcontractor approval rights in its prime contract with Ted Bates. It notified Harte-Hanks in writing on June 17, 1982, that, after reviewing "materials submitted by Ted Bates," it had approved the proposed subcontract award to Advo.

Our Office will consider subcontractor protests only in limited circumstances: (1) where the prime contractor is acting as a purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of rejecting or selecting a potential subcontractor, or significantly limiting subcontract sources; (3) where fraud or bad faith is shown in the Government's approval of the subcontract award or proposed award; (4) where the subcontract is "for" an agency of the Government; or (5) where the questions concerning the award of subcontracts are submitted by Federal officials who are entitled to advance decisions by this Office. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

Harte-Hanks contends that this case falls within Optimum Systems, Inc., above. It argues that the Navy acted in bad faith (exception 3) in approving the subcontract award. It also claims that the Navy wrongfully refused to review its protest and wrongfully approved the subcontract award while the protest was pending.

To support a finding of bad faith, the record must show, in the words of the Court of Claims, "well-nigh irrefragable [irrefutable] proof" that the contracting agency had a malicious and specific intent to injure the party alleging bad faith. Arlandria Construction Co., B-195044, B-195510, April 21, 1980, 80-1 CPD 276, at page 7. We do not believe that Harte-Hanks has shown that the Navy exhibited bad faith in approving this subcontract. Rather, in our view, the record reflects the Navy's implicit endorsement of Ted Bates' position that Advo's higher priced proposal merited selection for reasons relating to the perceived quality of that proposal. The Navy's view on the relative quality of the proposals may be erroneous, but it is not tantamount to bad faith.

Harte-Hanks' other argument urging this Office to review the protest is without merit. The decision of a contracting agency not to review a subcontractor protest and the approval by the contracting agency of a subcontract award while a subcontractor's protest is pending are not reasons for our review under Optimum Systems, Inc., above.

Accordingly, we conclude that the protester has not shown that the Navy's approval of the award of the subcontract to Advo was made in bad faith. Therefore, since this case does not fit within the guidelines listed in our decision in Optimum Systems, Inc., above, we will not consider the merits of Harte-Hanks' protest.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel