

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

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FILE: B-213905**DATE:** December 29, 1983**MATTER OF:** Horn & Smith, Inc.**DIGEST:**

Protest of agency decision to award contract under section 8(a) of the Small Business Act is not for consideration by GAO in absence of showing of possible fraud or bad faith on the part of government officials or a failure by agency officials to follow applicable regulations.

Horn & Smith, Inc. (Horn & Smith), protests the Department of the Navy's decision to award a contract for grounds maintenance to Bonded Maintenance Co. (Bonded) under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). Horn & Smith alleges that Bonded is not a disadvantaged contractor that should qualify for 8(a) awards. Horn & Smith further contends that government agencies are wasting appropriated funds by negotiating service contracts with the Small Business Administration (SBA) under the section 8(a) program when much lower prices could be obtained under the competitive bidding process.

We dismiss the protest.

Section 8(a) authorizes the SBA to enter into contracts with any government agency with procuring authority and to arrange for performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The agency contracting officer is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to award contracts under section 8(a) unless there is a showing of possible bad faith or fraud on the part of government officials or that applicable regulations have not been followed. MGL Construction, Inc., B-210766, February 22, 1983, 83-1 CPD 184.

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Horn & Smith does not allege fraud or bad faith on the part of government officials or that regulations have not been followed. Thus, Bonded's qualification as a section 8(a) contractor and the propriety of the contract price are not matters for determination by this Office. We point out, however, that under the 8(a) program, it is not unusual for contracts to be funded in amounts exceeding prices obtainable through unrestricted competition. Whatever additional price the government pays when it utilizes 8(a) contracting represents the cost of furthering the socio-economic goal of the 8(a) program in helping qualified firms to become self-sufficient. North American Precip Syndicate, Inc., B-212379, August 4, 1983, 83-2 CPD 171.

We dismiss the protest.

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