

DECISION

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

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FILE: B-214568**DATE:** March 27, 1984**MATTER OF:** Washington Patrol Service, Inc.**DIGEST:**

Determination whether to set aside a procurement under section 8(a) of the Small Business Act, and the propriety of the 8(a) award itself, are matters for the contracting agency and the Small Business Administration, which GAO will not review absent a showing of possible fraud or bad faith on the part of government officials, or an allegation that regulations were violated.

Washington Patrol Service, Inc. (WPS) protests the Department of the Army's decision to set aside a solicitation under the Small Business Administration (SBA) 8(a) program, and the attendant award of a subcontract to The E.C. Corporation. WPS, the incumbent contractor, requests that the procurement be resolicited on an unrestricted basis. WPS also requests that we obtain an administrative report from the Army in response to the protest, and convene a conference to discuss the matter.

We dismiss the protest without obtaining an agency report or granting a conference since it is clear that the protest is not for our consideration. 4 C.F.R. § 21.3(g), as added by 48 Fed. Reg. 1931 (1983).

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the SBA to enter into contracts with any government agency with procuring authority and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let a contract to the SBA upon such terms and conditions as may

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be agreed upon by the procuring agency and the SBA. We do not review decisions to effect procurements under the 8(a) program, and we do not consider protests of 8(a) awards, absent a showing of possible fraud or bad faith on the part of government officials or an allegation that regulations were violated. Ameriko Maintenance Co., Inc., B-212795, September 29, 1983, 83-2 CPD 392.

WPS is the incumbent contractor, itself having been awarded the contract under the 8(a) program 3 years ago (the Army extended the contract for the 2 option years). WPS states that it presently is graduating from the 8(a) program, and alleges that the decision to continue to set aside this procurement is in some way "retaliation" for the firm's prior request to the Army for an investigation into certain unspecified improper conduct by Army personnel relating to its incumbent contract.

WPS, however, has offered no evidence to support its charge, and a showing of bad faith would require irrefutable proof that the contracting officer had the specific and malicious intent to injure WPS. Calplant Engineering Services Inc.; Del-Jen, Inc., B-212734; B-212734.2, September 29, 1983, 83-2 CPD 391. In our view, WPS' unsupported complaint about the Army's continuing an 8(a) set-aside of which WPS was the last beneficiary does not show the possibility of bad faith to warrant further review by our Office. WPS also does not contend that regulations were violated. Therefore, we find no basis upon which to consider the protest. Ameriko Maintenance Co., Inc. supra.

The protest is dismissed.

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