

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-211439**DATE:** July 27, 1983**MATTER OF:** Northrop Services, Inc.**DIGEST:**

1. When protester, challenging cancellation of single solicitation and resolicitation and award of five separate contracts, has itself accepted four of the awards, GAO will dismiss protest with regard to these as academic. Even if protest were sustained, since level of effort required has been reduced, it is unlikely that GAO would recommend reinstatement of original solicitation. Ultimate remedy therefore would be recommendation for award to protester, and where this already has occurred, no useful purpose would be served by GAO considering the matter further.
2. Because of broad discretion given procuring agencies to award contracts to the Small Business Administration, under Section 8(a) of the Small Business Act, GAO will not review a decision to award such a contract unless the protester shows possible fraud or bad faith on the part of Government officials.
3. When agency has canceled solicitation for single contract and, under resolicitation, proposes to award five contracts, including one under Section 8(a) of the Small Business Act, protester has not presented proof of bad faith merely by showing that agency originally considered awarding it the single contract or by stressing the fact that there was internal disagreement among agency officials as to whether procurement should be broken out for multiple awards.

Northrop Services, Inc. protests the Environmental Protection Agency's (EPA) cancellation of a single solicitation for operation and maintenance of the agency's Office of Research and Development, Research Triangle Park, North Carolina, and the resolicitation and award of five separate contracts for the same services.

During development of the protest, Northrop, as the incumbent, continued to perform under extensions of its contract. On July 1, 1983, however, EPA awarded Northrop four of the new contracts; the remaining one will be performed by a small business under Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1980).

We find Northrop's protest academic as to the four awards, and we deny its protest with regard to the remaining one.

We need only summarize the background of this procurement. Under the original solicitation, No. DU-81-C160, issued February 5, 1982, EPA expected to award a level-of-effort contract, on a cost-plus-award-fee basis, for a 1 year term with options for 4 additional years. The successful contractor was to provide scientific and technical support to four laboratories and to the Environmental Criteria and Assessment Office at Research Triangle Park. The scope of work ranged from conduct of highly technical studies and operation of highly sophisticated equipment to general support services such as editorial assistance and storeroom operation.

Two offerors, Northrop and Engineering Sciences, Inc., responded to the request for proposals. EPA found only Northrop to be in the competitive range and, on June 14, 1982, issued a notice of selection for negotiations to it. During the next several weeks, negotiations progressed to the point where Northrop had been presented with a draft of a letter contract and Engineering Sciences had been debriefed. In July, however, EPA's Assistant Administrator for Administration apparently directed the reopening of discussions with both firms.

Northrop protested this action to our Office, arguing that the notice of selection, which EPA had rescinded on July 29, 1982, had created a binding contract between Northrop and EPA. Northrop also argued that Engineering Sciences should not have been allowed to submit a revised proposal after it had been declared technically unacceptable and, during its debriefing, had obtained information that enabled it to improve its competitive position.

Northrop withdrew this protest when, on August 19, 1982, EPA canceled the solicitation because of a "substantial redirection" of agency requirements.

This redirection, which EPA describes as an effort to separate specialized research for the different laboratories from more routine support functions, resulted in the five new solicitations: No. DU-83-B016, covering the Environmental Sciences Research Laboratory; No. DU-83-B017, covering the Health Effects Research Laboratory; No. DU-83-B035, covering the Environmental Monitoring Systems Laboratory; No. DU-83-B045, covering genetic toxicology research for the Health Effects Research Laboratory to be awarded to SBA under Section 8(a); and No. DU-83-C056, for general support of the Office of Research and Development. Overall, EPA states, the level of effort involved was reduced approximately 13 percent, from 573,300 to 498,235 hours a year; in addition, options under each contract were limited to 2 years.

Early in April 1983, shortly after issuance of these solicitations, Northrop again protested to our Office, attempting to revive its previous grounds of protest. In addition, Northrop alleged that the cancellation was improper, since the new solicitations covered services identical to those in the original solicitation and thus did not reflect a change in EPA's needs or provide a compelling reason to cancel. Northrop also contended that the Assistant Administrator's influence prevented the contracting officer from exercising the required independent judgment with regard to the cancellation. Finally, Northrop objected to the terms of the solicitations because they prohibited submission of alternate or consolidated proposals.

Despite the fact that it now has accepted four of the awards, Northrop refuses to withdraw its protest, urging that we consider the propriety of the cancellation. We, however, view the matter as academic. Even if we sustained Northrop's protest, due to the reduction in level of effort required, it is unlikely that we would recommend that EPA reinstate the original solicitation. Rather, the ultimate

remedy would be for us to recommend that EPA award contracts to Northrop under the new solicitations. Where this already has occurred, no useful purpose would be served by our considering the matter further. See Andrew Corporation, B-197203, February 23, 1981, 81-1 CPD 124. We consistently have refused to issue decisions on academic protests, and we therefore dismiss Northrop's as to the four awards. See generally Diversified Computer Consultants, B-205820, July 13, 1982, 82-2 CPD 47; Central Data Processing, Inc., B-183306, August 7, 1975, 75-2 CPD 89 (both dismissing protests by successful offerors).

As for the remaining award, Section 8(a) of the Small Business Act, supra, authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and then to subcontract to socially and economically disadvantaged small business concerns. The statute also authorizes the procuring agency's contracting officer to award contracts to SBA "in his discretion." In light of this broad discretion, we do not review agency decisions to award or not award contracts under Section 8(a) unless a protester can show possible fraud or bad faith on the part of Government officials. Welbilt Electronics Die Corporation, B-210289, February 1, 1983, 83-1 CPD 114.

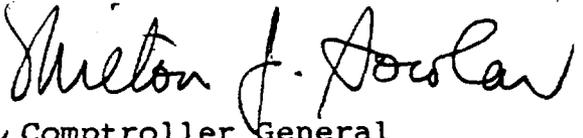
Here, Northrop has not presented any evidence of fraud on the part of Government officials, although it seems to imply bad faith. In this regard, we have stated that to show bad faith, protesters must present irrefutable proof that a contracting officer or the SBA had a specific and malicious intent to injure them, and we have held that the fact that an agency initially considered a sole source award to a small business before canceling a solicitation and proceeding with an 8(a) award does not constitute bad faith. Marine Industries Northwest, Inc., et al., B-207270, B-208315.2, February 16, 1983, 62 Comp. Gen. _____, 83-1 CPD 159; see also Gill Marketing Co., Inc., B-194414.3, March 24, 1980, 80-1 CPD 213, and cases cited therein.

We do not believe Northrop has met its heavy burden of proof merely by showing that EPA initially considered awarding a single contract to Northrop or by stressing the

B-211439

fact that there was internal disagreement at EPA as to whether the procurement should be broken out for multiple awards, including an 8(a) award. We do not believe, however, that the competitive system was enhanced by EPA's bringing negotiations with Northrop to such an advanced stage before canceling the original solicitation. See Honeywell Information Systems, Inc., B-193177.2, December 6, 1979, 79-2 CPD 392; aff'd on reconsideration, January 19, 1981, 81-1 CPD 26.

The protest of the Section 8(a) award is denied; as noted above, the remainder is dismissed.

for 
Comptroller General
of the United States