

DECISION



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

31355

FILE:

B-217427

DATE: June 3, 1985

MATTER OF:

Corporate Supply Center, Inc.

DIGEST:

District of Columbia (D.C.) is not authorized to award noncompetitive contract under D.C. Minority Contracting Act, as amended, simply because the contractor is considered to be an "exemplary" minority business concern.

Corporate Supply Center, Inc. (CSC), protests the extension of District of Columbia (D.C.) contract No. 0119-AA-75-0-3-PF held by Automated Data Management Corporation (Automated) for the supply of writing paper and envelopes. The original contract (awarded to Automated in December 1982 for a 1-year period) and the subsequent extensions of the contract--including the extension (through December 5, 1985) which is the subject of this protest--were all made under authority of the D.C. Minority Contracting Act (Act), as amended, D.C. Code §§ 1-1141 through 1-1151, 1-1104, 1-1107 and 1-1110 (1981).

We sustain the protest.

CSC, which is also an eligible minority firm for the requirement, insists that the requirements covered by the protested, noncompetitive extension should have been procured competitively among eligible minority concerns.

On the other hand D.C. states that:

"While it is the District Government's preference that negotiated contracts be competitive, applicable laws including section 1-1110(5) [and sections 1-1141 through 1-1147], D.C. Code, provide exceptions to the general rule, even where other minority companies are involved."

Further, D.C. states that the protested extension was also based on:

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". . . intentions to foster the objectives and enhance the continued growth of an exemplary minority firm by allowing the business to provide supplies and services in excess of a standard one year contract. In doing so, such an action provides the opportunity for a distinguished minority firm to avoid substantial losses, acquire the requisite track record, accumulate valuable experience and obtain the wherewithal to attract credit and financial support in the business community as a whole."

Section 1-1110(5) of the D.C. Code, cited by D.C., provides that:

". . . in order to foster local minority business opportunities, the Mayor, . . . may establish that the advertisement of selected contracts be limited to categories of contractors as he defines for . . . contracts or he may authorize negotiation in selected cases."

Sections 1-1141 through 1-1147 of the D.C. Code generally describe the provisions of the minority contracting program but none of these sections expressly authorizes contracting with one minority firm--to the exclusion of other eligible minority firms--based solely on a desire to "enhance the continued growth of an exemplary minority firm."

The subject contract is let under a minority contracting process known as a "sheltered market." Therefore, the authority conferred on the Mayor under section 1-1110(5), above, must be read in light of the definition of "sheltered market" found in D.C. Code § 1-1142(7) (1981) which reads:

"The term 'sheltered market' means a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on either a negotiated or competitive bid process." (Emphasis added.)

Under this provision, competition is required for negotiated "sheltered" contracts.

Since the definition of the minority contracting process requires competition for negotiated "sheltered" contracts, the Mayor is not authorized under section 1-1110(5), above, to award a contract to Automated without competition simply because that concern is considered to be an "exemplary" minority business.

Consequently, we think that D.C. should consider the feasibility of competing the remaining requirements involved in this contract. If D.C. decides that competition is feasible, and if that competition results in a price lower than the award price of Automated's remaining contract term, termination for convenience of Automated's contract and a new award would be appropriate.

for 
Comptroller General
of the United States