

DECISION



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

FILE: B-218602.2 **DATE:** August 23, 1985

MATTER OF: Prospect Associates, Ltd.--
Reconsideration

DIGEST:

Protest of the method of award to be utilized in a procurement restricted to disadvantaged small businesses under § 8(a) of the Small Business Act will not be considered where the protester is not a § 8(a) firm and therefore is not eligible for award, since protester is not an interested party under GAO Bid Protest Regulations.

Prospect Associates, Ltd. (Prospect), requests reconsideration of our decision Prospect Associates, Ltd., B-218602, June 17, 1985, 85-1 CPD ¶ 693, dismissing Prospect's protest against solicitation No. 263-85-P(87)-0076, issued by the National Institutes of Health (NIH). We deny the reconsideration request.

The solicitation, for conference management and related publication services, was restricted to socially and economically disadvantaged small business concerns under § 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), which authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by subcontracting with disadvantaged small businesses. Although Prospect, the incumbent provider of these services to NIH, is a small business, it is not a socially and economically disadvantaged small business in SBA's § 8(a) program. Prospect protested that restricting the procurement to § 8(a) concerns would preclude Prospect from competing and eliminate more than 95 percent of Prospect's

business. Prospect argued that the restriction therefore was improper because, under SBA's standard operating procedures, SBA may not consider a § 8(a) contract if it determines that a small business would suffer a major hardship if the procurement were removed from competition. Prospect basically contended that SBA's failure to make this determination necessarily implied bad faith, given its effect on Prospect's business.

Prospect also challenged the task order format proposed in the RFP, which, according to Prospect, contemplated orders being offered first to the highest-ranked § 8(a) firm, then, if not accepted, to the next highest ranked firm, etc. Prospect contended that this was contrary to the requirement for competition in government contracts. Prospect asked that either the § 8(a) restriction be withdrawn or that limitations, such as a total dollar ceiling or a narrow range of tasks, be applied in order to preserve Prospect's market.

Our prior decision dismissed Prospect's protest on the basis that Prospect did not make the necessary showing of possible bad faith or fraud for this Office to review SBA's compliance with its own internal procedures. We held that Prospect's allegation of bad faith was based on mere inferences drawn from the effect of the § 8(a) restriction on Prospect, and that inference and supposition were not sufficient to invoke our review. We did not explicitly address Prospect's challenges to the format of the subcontract(s) to be awarded. Prospect asks that we do so now.

Our prior decision did not specifically address Prospect's challenges to the format for awarding task orders because, after we dismissed the protest of the 8(a) restriction, Prospect was no longer an interested party under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), to protest the format of the subcontract(s) to be awarded. In this respect, our regulations require that a protester be "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." 4 C.F.R. § 21.0(a). While Prospect clearly had a direct economic

interest in whether these services were set aside for disadvantaged small businesses since the restriction to § 8(a) concerns would preclude Prospect from competing, Prospect had no such interest in the format for awarding tasks orders since it was not eligible for an award in any event. It was for this reason that we did not consider Prospect's challenge to the form of NIH's proposed § 8(a) subcontract(s). For the same reason, we will not review that matter now.

The request for reconsideration is therefore denied.

for 
Harry R. Van Cleve
General Counsel