



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Corporate Healthcare Planning--Request for  
Reconsideration  
File: B-233068.2  
Date: November 8, 1988

### DIGEST

Prior dismissal of protest against an agency's decision not to award a contract under Small Business Administration's 8(a) program is affirmed since our Office will not review a decision not to award a contract under 8(a) program absent a showing of possible bad faith or fraud or that regulations have been violated and protester has failed to support its allegation of bad faith.

### DECISION

Corporate Healthcare Planning (CHP) requests reconsideration of our dismissal of its protest against the decision by the Office of Minority Health (OMH), U.S. Department of Health and Human Services, to cancel request for proposals (RFP) No. 282-88-0056, which was to be awarded to CHP under the Small Business Administration's section 8(a) program.

The contract was for evaluation of the operations of the fiscal year (FY) 1987 and 1988 OMH grantees and to evaluate the activities of the FY 1986 grantees.<sup>1/</sup> Prior to award, however, OMH decided not to award a contract. CHP then filed a protest with our Office. We dismissed the protest pursuant to our regulations which provide that the decision to place or not to place a procurement under the 8(a) program and the award of an 8(a) subcontract are not subject to review absent a showing of possible fraud or bad

<sup>1/</sup> This decision is based on information contained in the protest submissions.

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faith on the part of government or that regulations may have been violated. 4 C.F.R. § 21.3(m)(4) (1988). CHP now alleges that OMH has demonstrated bad faith and that OMH violated procurement laws.

Prior to the procurement at issue here, OMH had entered into a contract with another 8(a) firm, ROW Sciences, Inc., to evaluate FY 1986 grantees of the OMH grant program. Although the requirements of the second evaluation contract at issue here apparently were similar to those of ROW's prior contract, ROW was not considered for the latter contract based on the OMH policy not to award multiple contracts to an 8(a) contractor. CHP was therefore selected for the contract.

According to the protester's documents, however, before award was made, the contracting officer erroneously informed OMH that the scope of work of the second contract was the same as the ROW evaluation contract and that it would therefore be illegal to award the second contract to any firm other than ROW. Relying on this advice, OMH decided not to award a contract to CHP. In this regard, the protester has submitted with its request for reconsideration a letter written by Mr. J. Henry Montes, the former Associate Director at OMH and project officer for this solicitation. In that letter, Mr. Montes attributes OMH's decision to cancel the contract to the contracting officer's "poor judgment" and OMH's "lack of experience" in the procurement process.

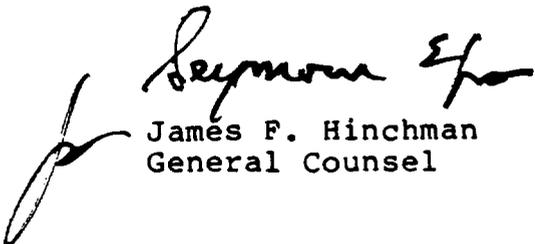
As stated above, the decision to award or not award an 8(a) subcontract is not subject to review absent a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated. 4 C.F.R. § 21.3(m)(4). To establish bad faith, the protester must present evidence which includes proof that the officials involved had a specific and malicious intent to injure the protester. Executive Resource Associates, Inc., B-228092, Nov. 10, 1987, 87-2 CPD ¶ 473. While CHP asserts that Mr. Montes' letter which it submitted "clearly supports" its allegations of bad faith, the letter states that the contracting officer's poor judgment and OMH's lack of experience caused the cancellation of the proposed award to CHP.<sup>2/</sup> This simply does not establish the reasonable possibility of bad faith. It indicates only that, at most, a poor judgmental decision attributable to limited

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<sup>2/</sup> CHP also asserts that "procurement laws" have been violated, but does not identify any violations.

experience was made by the agency. Accordingly, given the broad agency discretion to make contract award decisions relative to the section 8(a) program, we see no basis to question dismissal of this protest.

We affirm our prior dismissal.



James F. Hinchman  
General Counsel