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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cara, Inc.
File: B-233844; B-233845
Date: March 15, 1989

DIGEST

Protest of the reversal of agency decision to offer a requirement for counseling services to the Small Business Administration for award to the protester under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. IV 1986), is dismissed since decision was based on a determination that services were no longer needed because work could be performed by in-house personnel, which is a matter of executive policy.

DECISION

Cara, Inc., protests the reversal of a Marine Corps preliminary decision to offer a requirement for counseling and support services for the Family Services Center at Camp Pendleton, California to the Small Business Administration (SBA) for award to Cara under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. IV 1986). Section 8(a) authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

We dismiss the protest.

The Marine Corps initially intended to compete the requirement and synopsisized the requirement in the Commerce Business Daily on April 15, 1988. By letter of April 25, Cara contacted the SBA regarding its interest in the procurement as an 8(a) contractor.

On May 3, an SBA representative informed the Marine Corps of Cara's interest and requested that the procurement be reserved for the negotiation of an 8(a) award to the SBA. On August 29, Cara made a technical presentation to the contracting activity and was determined to be technically

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acceptable. The current contracts for these requirements, which were due to expire on September 30, were extended through December 31 to allow for negotiations. The record indicates, however, that in late September, the Director of the Family Services Center expressed some concern about Cara's proposal and considered performing the requirement in-house with civil service personnel.

By letter of November 21, received by the protester on November 28, the contracting officer notified Cara of an apparent decision to use civil service employees for the required positions, which became possible due to an increase in the agency's personnel ceiling. Cara was then informed that the requirement, as advertised, was canceled. Cara filed its protest against the cancellation and the withdrawal of the procurement from the 8(a) program with our Office on December 6.

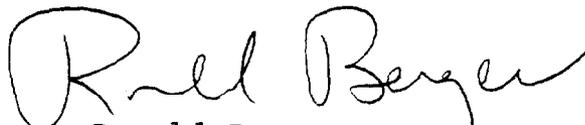
The agency reports that temporary civil service employees are presently performing these services and that a cost comparison study has been initiated to determine whether it is more economical for the agency to continue the services in-house. The Marine Corps states that once the option to perform in-house became available, it was in the government's interest to cancel negotiations with Cara in order to explore the potential cost savings of performing the requirement with government personnel. The record indicates that a final decision of whether to perform in-house has been postponed pending the outcome of the cost comparison study.

Since an agency's decision whether services should be performed in-house or by a contractor involves a matter of executive branch policy, not within our protest function, we generally do not review the agency's decision. Creative Resources, Inc., B-225950, Feb. 11, 1987, 87-1 CPD ¶ 153; Jet, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD ¶ 152; Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38. We have recognized, however, a limited exception to this rule where an agency utilizes the procurement system to aid in its determination by issuing a solicitation for the stated purpose of comparing the costs of in-house performance with the costs of contracting. We will consider a protest that the agency failed to follow established cost comparison procedures because we believe it would be detrimental to the procurement system if, after the submission of offers, an agency were permitted to alter the procedures it had established and upon which bidders had relied. Contract Services Co., 65 Comp. Gen. 41 (1985), 85-2 CPD ¶ 472.

The facts here do not fit within the limited exception described above. Here, the 8(a) procedures were never intended to be used to compare the estimated costs of in-house performance with the estimated costs of contracting. Instead, the agency decided during the 8(a) process to perform the work in-house, at least on a temporary basis. Thus, the Marine Corps, with the increase in its personnel ceiling, simply had no reason to continue the 8(a) negotiations since it was now capable of performing the work in-house. In this regard, it is well-established that an agency may cancel a procurement where a contractor's services are no longer required. See Carrier Corp., B-214331, Aug. 20, 1984, 84-2 CPD ¶ 197.

Further, we note that under section 8(a) of the Small Business Act, a government contracting officer is authorized "in his discretion" to let the contract to SBA upon terms and conditions to which the agency and SBA agree. 15 U.S.C. § 637(a)(1). Therefore, whether any particular contract should be awarded under section 8(a) is solely within the discretion of the government's procurement officers and no firm has a right to have the government satisfy a specific procurement need through the 8(a) program or award a contract through the program to that firm. See Lee Associates, B-232411, December 22, 1988, 88-2 CPD ¶ 618.

The protest is dismissed.


Ronald Berger
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