



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Compex Corporation

File: B-236884

Date: December 13, 1989

DIGEST

1. Protest against the proposed award of a contract under Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), is denied where the protester, which alleged that the procuring agency improperly favored a particular 8(a) contractor, has failed to show that the procurement officials acted fraudulently or in bad faith.
2. Protest of alleged conflict of interest due to relationship between high level official of the contracting agency and proposed awardee is denied where record does not show that any improper influence was exerted in procurement on behalf of proposed awardee.

DECISION

Compex Corporation protests the proposed award of a contract to Comsis Corporation for technical support services for the Urban Mass Transportation Administration's (UMTA) Section 15 Program.^{1/} The contract is to be awarded under Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). Section 8(a) authorizes the Small Business Administration (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 businesses.

We deny the protest.

^{1/} Section 15 of the Urban Mass Transportation Act of 1964, as amended, requires the Secretary to prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories, and a uniform system of accounts and records.

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Compex, the incumbent contractor, was awarded an 8(a) contract on September 30, 1986, which was scheduled to expire on September 30, 1989. UMTA decided, however, that a valid need existed for continuation of the services and determined that the follow-on services would also be procured through the 8(a) program. UMTA contacted 15 8(a) firms and requested them to submit their company profiles for a preliminary assessment of their qualifications to determine whether the firms would be included as potential candidates to be interviewed for selection for the follow-on contract. A technical evaluation panel reviewed the companies' profiles and, as a result, 10 firms were eliminated from further consideration. Of the five firms remaining, one withdrew. The initial assessments of the remaining four resulted in Compex being ranked first and Comsis third.

The final evaluation phase consisted of oral presentations by the four top ranked firms and a survey of their prospective facilities. The final evaluation resulted in the following scores:

<u>Name</u>	<u>Average Score</u>	<u>Rank</u>
Comsis	91	1
Compex	82	2
A	82	3
B	75	4

Specifically, the evaluation panel determined that Comsis' oral presentation demonstrated that its project management capabilities far exceeded the other firms and that it had the staff, experience, commitment, and expertise to perform all of the tasks concurrently and to produce the deliverables timely and accurately. UMTA thus concluded that Comsis was the best qualified firm to provide the support services under the Section 15 Program.

By letter dated July 18, 1989, UMTA submitted to SBA a proposed statement of work (SOW) classified under Standard Industrial Classification (SIC) Code 7374 (Computer Processing and Data Preparation Services) and requested authority to initiate contract negotiations with Comsis. SBA reviewed the SIC code and determined that based on the nature of the work it was inappropriate and requested UMTA to review the SIC code classification and select another SIC code.

In response, UMTA changed the SIC code to 7379 (Computer Related Services) and on August 9, 1989, notified SBA of the change. By letter dated August 10, 1989, SBA authorized UMTA to initiate negotiations with Comsis and on September 11, Comsis submitted its proposal. The proposal is currently being evaluated by UMTA.

The protester alleges (based on "circumstantial evidence") that UMTA improperly favored Comsis by: (1) modifying the SIC code to accommodate Comsis;^{2/} (2) ignoring the successful incumbency of Compex in the Section 15 Program; (3) ignoring the in-house expertise available through Compex that Comsis lacks; (4) relying upon the oral presentations to conclude Comsis was better qualified; and (5) ignoring the likelihood that Compex will offer a lower price than Comsis. The protester further alleges that a high level UMTA official with close ties to Comsis influenced the contract award process.

Since contracts are let under Section 8(a) of the Small Business Act to the SBA at the contracting officer's discretion on such terms as agreed upon by the procuring agency and SBA, the decision to place a procurement under the 8(a) Program and the award of an 8(a) subcontract are not subject to our review absent a showing of fraud or bad faith on the part of government officials or that regulations may have been violated. To make a "showing" of fraud or bad faith, we require the protester to present facts that reasonably indicate that the government actions complained of were improperly motivated. See Action Building Sys., Inc., B-235583 et al., Sept. 19, 1989, 89-2 CPD ¶ 244.

Here, the protester has failed to make the required showing. In our view, there is nothing improper in the contracting agency's use of the results of a technical review panel in determining to make a proposed award under the Section 8(a) Program to a particular firm. In fact, a contracting agency may actually make this determination without seeking competition. Buck, Allmond & Co., B-236382, Nov. 6, 1989, 89-2 CPD ¶ _____. SBA's regulations specifically permit the contracting agency to nominate a particular 8(a) firm where the agency has determined that the recommended concern has unusual technical qualifications to perform. See 13 C.F.R. § 124.301(c)(4)(xii)(C) (1988). In turn, the SBA may then award the contract to the firm designated by the agency.

^{2/} Compex alleges that Comsis did not qualify as a small business under the original SIC code.

Here, we think the fact that UMTA's selection of the proposed awardee was based on its evaluation of written profiles and oral presentations made by several firms believed to be technically qualified refutes the protester's unsupported allegation of fraud or bad faith on the part of the agency. Simply, we find that the circumstances alleged and the protester's specific disagreements with the finding of the technical evaluation panel do not involve questions of fraud or bad faith. That being so, we have no basis to object to the agency's evaluation. See Buck, Allmond & Co., B-236382, supra. We further note that the SBA specifically approved the award selection decision in all respects. Accordingly, we deny this protest ground.

Complex also argues that the proposed award was improper because of a conflict of interest between a high level UMTA official and Comsis. Specifically, the protester contends that the high level UMTA official was a former principal of a corporation sold to Comsis in the fall of 1986. Complex contends that this high level official maintained close personal ties with his former business associates and used his position in UMTA to influence UMTA's determination with respect to the Section 15 contract.

Based on the record, we question whether even the appearance of a conflict of interest arises under the facts of this case. The record shows that the high level agency official sold his entire interest in the firm to Comsis in the fall of 1986 and as of January 20, 1988, had no obligation whatsoever to either his old firm or Comsis. In fact, as a condition of employment, the agency official agreed to permanently disqualify himself from any activities concerning contract administration of the only contract then in existence between UMTA and Comsis. Further, the official agreed to disqualify himself from any technical activities with that contract and any future UMTA/Comsis matters until February 1988, the date on which all financial obligations between the official and his old firm were completed. Since February 1988, the official has been permitted to participate in activities involving Comsis, but he has assigned those duties to a subordinate. Further, with respect to the Section 15 Program, the record shows that the official has had no connection with the program since July 8, 1987, when the function was transferred to another division. The official did not participate in any way in the Section 15 procurement process involved here.

Consequently, there has been no showing that the agency official had the ability to or in fact influenced the award decision.

The protest is denied.

for Seymour Ego
James F. Hinchman
General Counsel