



Comptroller General
of the United States

Washington, D.C. 20548

K. Gilhony

Decision

Matter of: COMSIS Corporation

File: B-237321

Date: January 22, 1990

DIGEST

In light of agency's broad discretion to decide to contract or not contract through the section 8(a) program, there is no legal basis to object to agency's suspension of negotiations with an 8(a) firm pending resolution of protest by another 8(a) firm involving allegations of conflict of interest on the part of the agency's technical project officer in selecting the 8(a) firm for negotiations or to the issuance of a task order for these services within the scope of an existing contract with a third 8(a) contractor.

DECISION

COMSIS Corporation protests the Department of Interior, Office of Surface Mining's (OSM) suspension of negotiations for an automatic data processing support services requirement offered to the Small Business Administration (SBA) for award to COMSIS under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). 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. COMSIS also protests the issuance of a task order by OSM under its existing 8(a) contract with Data Computer Corporation of America (DCCA) to cover these services.

We deny the protest.

By letter dated August 17, 1989, OSM offered certain automatic data processing support services at OSM's offices in Pittsburgh, Pennsylvania and Lexington, Kentucky to the SBA for award through the SBA's section 8(a) program. OSM nominated COMSIS for award. By letter dated September 15, 1989, SBA notified OSM that the requirement had been accepted for the 8(a) program on behalf of COMSIS and authorized OSM to conduct negotiations directly with COMSIS.

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During these negotiations, on September 11, OSM received a letter from another 8(a) concern, Computer Friend, Inc. (CFI), protesting the proposed award to COMSIS, alleging a conflict of interest and collusion involving the OSM technical project officer in selecting COMSIS as the 8(a) firm with which to conduct negotiations. OSM initiated an investigation of these charges and suspended negotiations with COMSIS. Because OSM determined some vehicle was necessary to provide continued ADP support services pending completing an investigation of the charges in CFI's protest, given that the incumbent contractor had issued termination notices to its employees and closed out its leases for space and equipment, OSM issued a task order effective October 1 against 8(a) contract No. HQ51-CT89-32008 with DCCA for temporary support services. On October 6, COMSIS protested to our Office.

COMSIS contends that OSM suspended negotiations with it to avoid an appearance of a conflict of interest, which COMSIS contends is an invalid basis to suspend negotiations. According to COMSIS, since negotiations were improperly cut off, OSM improperly issued a task order to DCCA. COMSIS argues that the task order is an improper change to that contract since it is for services in a geographic area not covered by that contract.

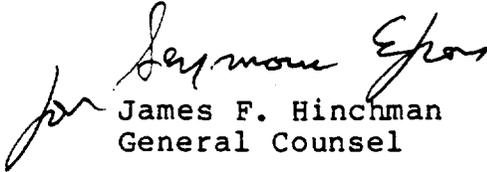
Under section 8(a) of the Small Business Act, a government contracting officer is authorized "in his discretion" to let the contract to SBA upon terms and conditions to which the agency and SBA agree. 15 U.S.C. § 637(a)(1). Therefore, no firm has a right to have the government satisfy a specific procurement need through the 8(a) program or award a contract to that firm. Lee Assocs., B-232411, Dec. 22, 1988, 88-2 CPD ¶ 618. Consequently, we will object to an agency's actions under the section 8(a) program only where it is shown that agency officials engaged in bad faith or fraud or violated regulations. Kinross Mfg. Corp., B-234465, June 15, 1989, 89-1 CPD ¶ 564.

COMSIS has not alleged any fraud or bad faith on the part of agency officials. Given the contracting officer's broad discretion in determining whether to award a section 8(a) contract, it clearly is legally unobjectionable for OSM to suspend negotiations with COMSIS while investigating

Computer Friend's allegations of conflict of interest in the award of OSM's requirement.1/

As for COMSIS's objection to the issuance of the task order to DCCA under its 8(a) contract with the SBA and OSM, the record shows that, contrary to COMSIS's allegation, the contract provides for nationwide ADP support services. Under the circumstances, there is no basis to object to the issuance of the task order under another 8(a) contract, since it is unquestioned that the agency had a continuing need for contractor support and, as indicated above, it had broad discretion as to how it could satisfy its requirements under the 8(a) program, absent fraud or bad faith.2/

The protest is denied.


James F. Hinchman
General Counsel

1/ The record indicates that Interior and the SBA have not resolved the question whether there was a conflict of interest situation that should preclude COMSIS from receiving an 8(a) award.

2/ The protester has challenged Interior's decision to continue performance of the task order during the pendency of this protest. Since the agency has informed us of its written determination to go forward with performance, it has complied with its statutory obligation. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.