



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Department of Health and Human Services--
Modification of Remedy

File: B-254909.2

Date: July 22, 1994

James L. McNeil for the protester.
Terrence J. Tychan, Department of Health and Human Services.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Prior decision is modified to delete recommendation that
awardee's contract be terminated for the convenience of the
government where information provided by contracting agency
subsequent to issuance of our decision shows that
terminating the contract and recompeting the requirement is
not practicable.

DECISION

The Department of Health and Human Services (HHS) requests
that we modify our decision in McNeil Technologies, Inc.,
B-254909, Jan. 25, 1994, 94-1 CPD ¶ 40, recommending that
HHS terminate a contract awarded to the KRA Corporation
under the Small Business Administration's (SBA) section
8(a) program.

We sustained the protest based on a finding that SBA
improperly failed to follow applicable regulations when it
accepted the requirement into the 8(a) program. We
recommended that consistent with its regulations, SBA
properly determine whether including the requirement in the
8(a) program would have an adverse impact on McNeil, a small
business. We further recommended that if SBA concluded that
acceptance of the requirement was inappropriate, the
requirement not be retained in the 8(a) program and the
contract awarded to the KRA Corporation be terminated. By
letter dated March 24, 1994, SBA informed our Office that
review of the matter in accordance with our recommendation
revealed that acceptance of the requirement in the
8(a) program had an adverse impact on McNeil.

HHS requests that we modify our decision so as to delete the recommendation that the contract awarded to the KRA Corporation be terminated. HHS states that the contract awarded to KRA is a 2-year contract, without options, scheduled to be completed by September 1995. The effort represents the final work to be done under this program (i.e., the contractor's primary responsibility during the last year of the contract is to assist in closing down the program). As such, the agency states that there is a need for speed and efficiency in accomplishing all the necessary finalizing tasks within the time remaining on the contract. According to HHS, recompeting the last year of the effort would require approximately 6 months. The agency argues that it thus would be disruptive to the program to terminate the contract awarded to KRA, and compete the final months of the contract. The agency further states that McNeil will be afforded opportunities to participate in HHS' future procurements. The protester states that it does not object to KRA's performance of the remainder of the contract.

In determining the appropriate recommendation in cases where we find a violation of procurement laws or regulations, we consider all the circumstances surrounding the procurement, including the seriousness of the procurement deficiency, the degree of prejudice to other offerors, interested parties, the extent of performance cost to the government, the urgency of the procurement, and the impact of the recommendation on the user or contracting agency's mission. See 4 C.F.R. § 21.6(b) (1994); Science Applications Int'l Corp.; Department of the Navy--Recon., 71 Comp. Gen. 481 (1992), 92-2 CPD ¶ 73. In view of the circumstances here, we agree that terminating the contract awarded to the KRA Corporation is not appropriate. See Bush Painting, Inc.--Modification of Remedy, B-239904.2, Jan. 11, 1991, 91-1 CPD ¶ 28. Accordingly, we revise our previous decision to delete the recommendation that HHS terminate the contract awarded to the KRA Corporation.

/s/ James F. Hinchman
for Comptroller General
of the United States