

Spangenberg

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Comptroller General
of the United States

101204

Washington, D.C. 20548

Decision

Matter of: Metro Monitoring Services, Inc.

File: B-260832

Date: April 19, 1995

DECISION

Metro Monitoring Services, Inc. protests the Department of Transportation, Federal Aviation Administration's (FAA) decision to procure weather observation services at Thermal, Nevada through the modification of an existing Section 8(a) contract with Condor Reliability Services, Inc.

We dismiss the protest.

The FAA advises that contract No. 50ABW200045 was awarded to Metro on March 2, 1992, by the National Weather Service (NWS), for weather observation services to be provided to the FAA and the NWS at Thermal, Nevada. The term of the contract was for a base period from May 1, 1992, to April 30, 1993, with two 1-year option periods, which expire April 30, 1995. The FAA has assumed responsibility for this requirement from the NWS and has decided to modify an existing Section 8(a) contract with Condor at the expiration of Metro's contract to accomplish these services. The FAA, in cooperation with the Small Business Administration (SBA), had awarded a Section 8(a) contract to Condor on October 1, 1994, for weather observation services at Lovelock and Elko, Nevada, and Sacramento and Bakersfield, California, and the FAA asserts that the services at Thermal are within the general scope of that contract.

Metro protests that FAA is improperly adding the requirement to Condor's contract on a noncompetitive basis under the Section 8(a) program.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially disadvantaged small business concerns. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the Section 8(a) program generally is limited

to determining whether government officials have violated regulations or engaged in fraud or bad faith. See 4 C.F.R. § 21.3(m)(4) (1995); Lecher Constr. Co.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127. To show bad faith, the protester must present undeniable proof that the procuring agency had a malicious and specific intent to injure the protester. Ernie Green Indus., Inc., B-224347, Aug. 11, 1986, 86-2 CPD ¶ 178.

While Metro questions the status of Condor as a disadvantaged business since it will receive the Thermal requirement along with the services provided under its current 8(a) contract, the protester has not shown the reasonable likelihood of either a violation of regulations, or fraud or bad faith by government officials.

The protest is dismissed.



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