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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Nomura Enterprise Inc.

File: B-254581

Date: September 15, 1993

Al Weed for the protester.
Matthew M. Mihelcic, Esq., Department of the Air Force, for the agency.
Christine Bednarz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency did not violate applicable regulations in conducting informal assessment, as opposed to a formal technical evaluation, to assist in determining which firm to negotiate a noncompetitive contract for support services pursuant to section 8(a) of the Small Business Act.

DECISION

Nomura Enterprise Inc. protests its elimination as a potential source under section 8(a) of the Small Business Act (SBA), 15 U.S.C. § 637(a) (1988), to perform a Department of the Air Force requirement for technical evaluation services for the Air Mobility Command and United States Transportation Command. Nomura protests that its elimination improperly stemmed from an unauthorized technical evaluation and that the requirement should therefore be competitively procured.

We dismiss the protest.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(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. 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 engaged in fraud or bad faith or have violated regulations. See 4 C.F.R. § 21.3(m)(4) (1993); Lecher Constr. Co.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.

The Air Force published a synopsis of its requirement in the Commerce Business Daily (CBD) on July 1, 1993. The CBD announcement stated that a sole-source contract under section 8(a) was contemplated. The CBD announcement described the anticipated scope of work for the contract by listing a variety of engineering and technical support services. The CBD announcement requested interested firms to provide a capability statement of 15 pages or less based upon the synopsis of work. The announcement added that the capability statements would form the basis for the selection of no more than eight eligible 8(a) firms who might be invited to brief the government's technical representatives prior to determining which firm should be awarded the sole source 8(a) contract.

Nomura furnished a capability statement to the Air Force on July 16. In an August 6 letter, the Air Force notified Nomura that it had reviewed the firm's capability statement, but had not selected Nomura to advance to the briefing stage. This protest followed.

Nomura argues that the agency's refusal to consider it as a potential source was brought about by the agency's asserted violation of 13 C.F.R. § 124.308(g) (1993), which states:

> "SBA will not authorize formal technical evaluations for sole source 8(a) contracts. If a procuring agency requires the performance of a formal technical evaluation among more than one 8(a) concern, the procuring agency must request that the requirement be a competitive 8(a) award. . . . Agencies may, however, conduct informal assessments of several 8(a) firms' capabilities to perform a specific requirement, provided that the statement of work for the requirement is not released to any of the participating 8(a) firms."

Nomura argues that the CBD announcement contained the statement of work for this requirement, which rendered the announcement "tantamount to a formal solicitation," and the capability statements were essentially "proposals to perform to the statement of work." Thus, Nomura argues that "the Air Force evaluation of such 'capability statements' is in fact, a formal technical evaluation," and, by allegedly conducting such a formal technical evaluation, the Air Force was required to solicit the requirement as a competitive 8(a) procurement and to evaluate proposals on the basis of established evaluation criteria.

Nomura's allegations are factually incorrect and do not support that the Air Force violated 13 C.F.R. § 124.308(g). Contrary to Nomura's assertions, the CBD announcement did not release the statement of work for this procurement, but only a short outline of the agency's expected requirements. In fact, the agency states that the statement of work for this procurement has yet to be finalized. Neither did the agency conduct a formal technical evaluation of the respondents' capability statements, which was, in any event, impossible, since the capability statements were necessarily general and no solicitation had been issued to establish the evaluation criteria. In this regard, Nomura concedes that "there [were] no evaluation criteria and . . . the evaluation was . . . a 'beauty contest.'"

Since the agency did not conduct a formal technical evaluation, it did not violate 13 C.F.R. § 124.308(g), so as to require a competitive 8(a) acquisition. The agency's use of an informal assessment to narrow the competition prior to the release of a statement of work was entirely consistent with the regulation, and provides no basis to challenge the anticipated award of a noncompetitive 8(a) contract in this case.

The protest is dismissed.

James A. Spangenberg
Assistant General Counsel