



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas Consultants, Inc.

File: B-259322

Date: December 14, 1994

DECISION

Thomas Consultants, Inc. protests the proposed sole source award to C.J. Health Records, Inc., under solicitation No. N63410-4098-0001, issued by the Department of the Navy. The procurement is being conducted under section 8(a) of the Small Business Act, 15 U.S.C § 637(a) (1988 & Supp. V 1993).¹ Thomas asserts that the Small Business Administration (SBA) improperly designated the contract for award to C.J. Health on a sole source basis instead of competing the contract for award among eligible 8(a) firms, including Thomas.

We dismiss the protest.

The solicitation, which provides for the award of an indefinite delivery/indefinite quantity (ID/IQ) contract for manpower analysis support services, was offered by the Navy to the 8(a) program for award. The Navy estimated the value of the contract to be awarded under the solicitation at \$3.5 million with a guaranteed minimum of \$350,000. Because the estimated minimum value of the contract did not exceed \$3 million, the agency concluded that it could be awarded on a sole source basis to C.J. Health, an eligible 8(a) program participant, in accordance with 13 C.F.R. § 124.311(a) (1994).²

¹Section 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 small business concerns.

²13 C.F.R. § 124.311(a) provides, in pertinent part, as follows:

"(a) Competitive thresholds. A contract opportunity offered to the 8(a) program for award
(continued...)"

Thomas protested that the agency's determination to award the contract on a sole source basis was improper. Thomas argued that the provisions of 13 C.F.R. § 124.311(a), which appear to permit such an award, are inconsistent with the requirements of the Small Business Act. In this regard, Thomas points out that the Act, while setting forth the same thresholds for the award of contracts to 8(a) program participants on a competitive or sole source basis (e.g., \$5,000,000 and \$3,000,000), does not provide for the consideration of ID/IQ contracts at their guaranteed minimum values. See 15 U.S.C. § 637(a)(1)(D)(i) (1988 & Supp. V 1993).

Subsequent to the filing of the protest, the agency informed our Office that its needs had been reduced significantly, and that the revised estimated value of the contract to be awarded totals \$2.5 million with a guaranteed minimum value of \$250,000.

Because the total estimated value and guaranteed minimum value of the contemplated contract are now under the thresholds for competitive awards set forth in both the Small Business Act and its implementing regulations, the factual and legal grounds in Thomas's protest are no longer legally sufficient such that Thomas would prevail in its

²(...continued)

shall be awarded on the basis of a competition restricted to eligible [p]rogram [p]articipants if:

(2) The anticipated award price of the contract, including options, will exceed \$5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and \$3,000,000 for all other contracts. For purposes of [ID/IQ] contracts, the thresholds will be applied to the guaranteed minimum value of the contract."

claim of improper agency action, even if its claims were uncontradicted. 4 C.F.R. §§ 21.1(e) and 21.3(m) (1994); Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

Accordingly, the protest is dismissed.


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Assistant General Counsel