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# Champion Business Services, Inc., B-283927, January 24, 2000



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## Decision

**Matter of:** Champion Business Services, Inc.

**File:** B-283927

**Date:** January 24, 2000

Carol E. McCallister for the protester.

Scarlett D. Grose, Esq., General Services Administration, and Kevin R. Harber, Esq., and John W. Klein, Esq., Small Business Administration, for the agencies.

John L. Formica, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Agency's sole-source award of contracts for services on a monthly basis through the Small Business Administration under the section 8(a) program, while the agency was developing specifications for a 1-year contract to be awarded on a sole-source basis through the section 8(a) program is not inconsistent with the provision in Federal Acquisition Regulation § 19.805-1(c) that prohibits an agency from dividing a proposed section 8(a) requirement into several separate action in order to avoid the \$3 million threshold for competing such contracts.
2. Agency is not required to include four 1-year options in a solicitation for a 1-year contract for services under the section 8(a) program so that the contract's estimated value would exceed the \$3 million threshold which would require that the requirement be competed.

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## DECISION

Champion Business Services, Inc. protests the sole-source award by the General Services Administration (GSA) of a number of indefinite-quantity contracts with 1-month periods, as well as GSA's issuance of a solicitation on a sole-source basis with a 1-year performance period, through the Small Business Administration (SBA) under the section 8(a) program to Gonzales Consulting Services, Inc. for dispatch and security system monitoring services.

We deny the protest.

In November 1996, GSA awarded a contract for the dispatch, security and monitoring services to RMES Communications, Inc. Agency Report at 1. Although the contract provided for a base period of 1 year with four 1-year options, GSA determined during the first option year that its requirements were no longer being met by the RMES contract and decided not to exercise the second option. Id.

GSA contacted SBA at that time and requested that SBA identify a contractor participating in the section 8(a) program "that could perform on a month-to-month basis, pending [GSA's] development of appropriate specifications." Contracting Officer's Statement at 1. SBA responded by identifying Gonzales as an eligible potential contractor and informing GSA that it "need not submit anything further." Id. at 2. GSA subsequently entered into the first of a series of indefinite-delivery contracts, each with a performance period of 1 month, with Gonzales for the services. Id. at 1-2.

Since December 1, 1998, the monthly sole-source contracts have been awarded to, and performed by, Gonzales through SBA's section 8(a) program. Id.; Agency Report, exhs. 4-15 (GSA month-to-month solicitation/contract/order for commercial items issued to Gonzales Consulting Services, Inc.). GSA explains that it has been developing adequate technical specifications for a solicitation to be issued on a sole-source basis under the section 8(a) program for a 1-year contract, and has now issued such a solicitation and offered the procurement to the section 8(a) program with an "offering letter listing all parties that have expressed an interest in the procurement." [1] Contracting Officer's Statement at 2; Supplemental Agency Report at 1.

The protester argues that, in awarding the 1-month contracts to Gonzales, the agency has improperly exceeded "the six (6) month limit" imposed on such awards by Federal Acquisition Regulation (FAR) § 37.111. Protest; Protester's Comments, Nov. 24, 1999, at 4.

FAR § 37.111 states that "[a]ward[s] of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting officers," provides that contracting officers "may include an option clause . . . in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract," and states that extensions under such an option clause "shall not exceed 6 months." Because FAR § 37.111 only applies to a contracting agency's extension of performance under an existing service contract, whereas the record here evidences that GSA has issued and awarded a series of contracts to Gonzales on a month-to-month basis rather than extending performance under an existing contract, this protest basis has no merit.

The protester also complains that GSA has continued to issue and award 1-month contracts in order to "dodge and circumvent" the requirement in FAR § 19.805-1(a)(2) and 13 C.F.R. § 124.506(a)(1)(ii) that acquisitions for services offered to SBA under the section 8(a) program be awarded on the basis of competition if the anticipated contract price exceeds \$3 million.

As pointed out by GSA, each monthly contract awarded to Gonzales had an estimated value of approximately \$93,000, such that even if the requirements had been contracted for a full year, the approximate total price of \$1,116,000 would be less than the \$3 million price at which competition is required. Agency Report at 3. Moreover, SBA explains that the provision set forth at FAR § 19.805-1(c) and 13 C.F.R. § 124.506(a)(4), which states that an agency cannot divide a proposed section 8(a) requirement with an estimated value exceeding the applicable threshold for competition of \$3 million into several separate actions for lesser amounts in order to use the section 8(a) sole-source procedures to award to a single contractor, is inapplicable here because the acquisitions challenged by the protester are "stop-gap measure[s] designed to procure necessary services until such time as an appropriate solicitation can be drafted and issued." SBA Report at 3. SBA concludes that GSA's action "does not appear to pose any threat to the aims sought to be advanced by the competitive threshold requirement." Id. We find SBA's analysis and conclusion reasonable. [2]

The protester argues that the solicitation issued by GSA providing for the award of a 1-year contract under

the section 8(a) program on a sole-source basis should instead provide for the award of a 1-year contract with four 1-year options on a competitive basis. In this regard, the record reflects that the value of a 1-year contract is below the \$3 million threshold at which competition is required, whereas a contract providing for a 1-year base period with four 1-year options would exceed the \$3 million threshold and would thus have to be competed among eligible section 8(a) program participants in accordance with 13 C.F.R. § 124.506(a). Agency Report at 3. The protester maintains that the "requirement has been truncated into smaller one-year awards in order to circumvent the competitive threshold." Protester's Comments, Nov. 24, 1999, at 3.

GSA explains that the "Mega Centers are a new and developing program" and that because of this "extensive changes" to the agency's requirements "are a distinct possibility." Agency Report at 2. For example, the record reflects that, while the predecessor contract provided for a workforce of approximately 9 full-time equivalent positions, the current specification provides for a workforce of approximately 45 positions. Letter from Protester's to GAO I (Nov. 15, 1999); Contracting Officer's Statement at 3. The agency concludes that the procurement of the services on a yearly basis is in its best interests because it "gives the agency the ability to change its requirements and expand the scope of the contract in the future without concern regarding out-of-scope changes." Agency Report at 2.

The record reflects that GSA has a reasonable basis for issuing the solicitation providing for the award of a 1-year contract--that is, that the Mega Centers program is new and undergoing considerable change, which may well lead to extensive changes over the next few years in the agency's requirements for the dispatch and security monitoring services under consideration. [3] Under these circumstances, we cannot find that the agency is required by 13 C.F.R. § 124.506(a)(4) to issue a solicitation providing for a performance period of more than 1 year.

The protest is denied.

Comptroller General

of the United States

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## Notes

1. During the course of this protest, GSA awarded a 1-year sole-source contract to Gonzales under the 8(a) program without advising SBA in its offering letter of all parties that expressed interest in the procurement as required by 13 C.F.R. § 124.502(c)(14) (1999). Subsequently, GSA remedied this problem by terminating that contract award and submitting an offering letter to SBA for the 1-year requirement which mentioned all parties, including Champion, who expressed interest in the procurement.

2. The protester also complains that GSA failed to "meet[] the processing requirements for sole source 8(a) awards" when it initially contacted SBA and subsequently awarded Gonzales the monthly contracts, because it did not send an offering letter to SBA as assertedly required by 13 C.F.R. § 124.502, and that SBA's oral advice to GSA that this letter was unnecessary for such interim contracts was inconsistent with this regulation. Protester's Comments, Nov. 24, 1999, at 2; Protester's Comments, Jan. 12, 2000, at 1, 4. Since the protester does not claim that it was prejudiced in any way by GSA's alleged failure here, we will not consider this aspect of Champion's protest further. Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 4-5.

3. Contrary to the protester's assertion, an agency is not required to plan to make contract modifications to account for the reasonably expected changes to the contract requirements simply to extend the contract

term so that it will exceed the \$3 million threshold.