

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Harrington
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FILE: B-220581**DATE:** January 16, 1986**MATTER OF:** Data Transformation Corporation**DIGEST:**

1. Protest that a contract awarded under the Small Business Act § 8(a) has been improperly extended beyond the incumbent's 8(a) program eligibility is dismissed as academic when the agency does not exercise the option for the extension.
2. A sole-source award may be justified on the basis of urgent and compelling circumstances when ongoing, necessary services would otherwise be interrupted and only the incumbent can meet the government's needs within the required time.

Data Transformation Corp. (DTC) protests the Federal Aviation Administration (FAA) award of a sole-source contract for services relating to the maintenance and operation of the FAA Headquarters Computer Facility to Input Output Computer Services, Inc. (IOCS). The protester argues that the award represents an improper extension of a contract initially authorized under the Small Business Act, section 8(a), 15 U.S.C. § 637(a) (1982), since the incumbent contractor was no longer eligible for 8(a) status at the time of the extension. The protester also argues that the sole-source award cannot be justified on the basis of an urgent and compelling need for the services.

We dismiss the protest in part and deny it in part.

A 3-year contract for this requirement had been awarded to the Small Business Administration (SBA) and had been subcontracted to IOCS under the 8(a) program. This contract expired on September 30, 1985, with no option years remaining.

In September 1984, the Department of Transportation (DOT) adopted a plan to consolidate FAA and other DOT headquarters computer operations under a single, centrally managed 5-year contract. However, for reasons that are not

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clear from the record, DOT found that it could not execute a consolidated DOT-wide contract in time to cover FAA's requirements for FY 1986.

On May 14, 1985, a synopsis was published in the Commerce Business Daily to advertise the DOT/FAA requirement. The synopsis provided prequalification criteria which prospective offerors would have to meet in order to receive a copy of the request for proposals (RFP) for the consolidated requirement. Prequalification was based on written responses to the criteria. The synopsis also indicated DOT's intention to extend the existing contracts (the FAA contract with IOCS and a separate DOT contract with another contractor) to cover fiscal year (FY) 1986, if no firms were found that satisfied the prequalification requirements.

Thirty-three firms responded, including DTC, but only one was considered qualified under the announced criteria. That one expressed no interest in the FY 1986 requirement, wanting only to participate in the consolidated DOT/FAA procurement.

DOT declined to take further procurement action on the FAA requirement, and returned it to FAA for action. In September, FAA modified the existing IOCS contract to include an extension option to cover FAA's requirement for FY 1986.

DTC argues that the contract may not be awarded on a sole source basis except under the 8(a) program, and that IOCS is no longer eligible under this program.

The agency reports that after investigating the circumstances, it agrees that it would have been improper to contract further with IOCS under the 8(a) program. It therefore has not exercised the option to extend the contract, but instead has awarded a 120-day contract to IOCS to continue performance until the services of a new 8(a) contractor can be acquired.

The alleged impropriety of the extension of the 8(a) contract is rendered academic by the agency's decision not to exercise the option. We will not consider an issue when, as here, the agency has altered its actions so that no useful purpose would be served by our decision. See Midwest Holding Corp., B-219926, Sept. 26, 1985, 85-2 CPD ¶ 344. This portion of the protest is therefore dismissed.

DTC also protests that the interim award to IOCS is improper, contending that "there is no legal or compelling operational or safety needs that can justify letting a contract in the manner proposed in FAA's [report]." The thrust of the protester's argument is that the FAA's requirement is neither compelling nor urgent, and that other contractors were available with the necessary personnel, training, expertise and experience required to perform the contract.

Section 303(c) of the Federal Property and Administrative Services Act of 1949, as added by the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, title VII, 98 Stat. 1175, 1176 (1984), 41 U.S.C.A. § 253(c)(1) (West Supp. 1985), provides that an executive agency may use procedures other than competitive where the services are available from only one responsible source and no other service will satisfy the needs of the agency. See also Federal Acquisition Regulation (FAR) § 6.302-1 (FAC 84-5, April 1, 1985).

The agency report states that the FAA Headquarters Computer Facility provides computer and word processing support services throughout FAA headquarters and indirectly influences the operation of computer facilities located at FAA regional and center offices. These services are required 24 hours a day, 7 days a week. The agency argues that it would incur serious injury if it could not obtain trained, proficient personnel to operate the facility without interruption. In these circumstances, the agency contends that its requirement for the services was of unusual and compelling urgency, and therefore justified the award to IOCS, as the only qualified contractor available to immediately continue performance until a new contract can be awarded. In this connection, the appropriate justification was signed by the contracting officer and approved by the competition advocate as required by CICA.

A sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. See WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ ____.

Here, the record indicates that FAA was not aware that it would need to handle its own procurement, separate from DOT, for FY 1986 until it was determined that a general, DOT-wide contract could not be awarded in time to cover FAA's interim requirements. At that point, IOCS was the only company known to be qualified to perform the work.

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Although the requirement had been synopsisized in the CBD, none of the firms that responded and were interested in the FY 1986 contract were considered qualified to take over the performance of these services. Thus, the lack of advance planning on the part of the procuring activity does not appear to us to have been a factor in the requirement to award the interim contract.

DTC's contention that other contractors were available and able to immediately continue performance is simply not supported by the record. Although DTC disagrees with the agency's assessment of the required level of experience and expertise for the performance of this contract, our Office will not question an agency's judgment of its actual minimum needs unless there is a clear showing that the determination is unreasonable. Information Systems & Networks Corp., B-218642, July 3, 1985, 85-2 CPD ¶ 25. Here, the protester has made no such showing.

In these circumstances, we believe the FAA's determination to negotiate a limited, interim contract with IOCS was reasonable on its face. This portion of the protest is therefore denied as is the protester's request for attorneys' fees and the cost of pursuing the protest. 4 C.F.R. § 21.6(a) (1985).

Finally, DTC requests that it be permitted to compete for the proposed 8(a) procurement for these services. However, that is a matter for SBA to determine since the CICA does not mandate competition in the award of 8(a) contracts. Hence, we will not review the award or proposed award of 8(a) subcontracts with the SBA absent a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated. Cassidy Cleaning, Inc., B-218641, June 24, 1985, 85-1 CPD ¶ 717. We find no evidence of these factors present, and dismiss this issue.

The protest is denied in part and dismissed in part.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel