



U.S. Department of Justice

Civil Division

1100 L Street, N.W.

Washington, D.C. 20530

March 17, 2010

Michael A. Chodos
Deputy General Counsel
U.S. Small Business Administration
Washington, D.C. 20416

Re: Mission Critical Solutions v. United States,
No. 09-864 (Fed. Cl.) (Feb. 26, 2010)

Dear Mr. Chodos,

This letter responds to your question regarding the scope of the injunction entered by the Court of Federal Claims in Mission Critical Solutions v. United States. As explained below, the injunction applies only to the specific contract at issue in this case and not to operation of the SBA's parity rule more generally.

As you know, in Mission Critical, focusing upon 15 U.S.C. § 657a(b)(2), the Court of Federal Claims considered whether the Small Business Act requires that the government consider whether there is a reasonable expectation that not less than two qualified HUBZone small business concerns will submit offers and whether a contract award may be made to a qualified HUBZone small business at a fair market price before a contract may be awarded under another small business program or on a sole-source basis. Slip. Op. at 33. Based upon its interpretation that the statute required such consideration, the Court provided the following relief:

[t]he court declares unlawful the Army's procurement actions in making the sole source award . . . [at issue in that case] without first determining whether a set-aside for HUBZone small business concerns was required under the HUBZone statute. The court orders defendant to determine whether the criteria of 15 U.S.C. § 657a(b)(2)(B) are met, such that the contract opportunity at issue in this case must be awarded on the basis of competition among qualified HUBZone small business concerns. See 15 U.S.C. §

657a(b)(2)(B). The court enjoins the United States from awarding the IT support services contract at issue in a manner that is not in compliance with the Small Business Act as the court here interprets it.

Slip. Op. at 35.

By its express terms, the injunction entered by the Court applies to the specific procurement decision and to the specific contract at issue in the litigation. In our view, the injunction reflects the nature of the Court's jurisdiction, which, in brief, as relevant here, is defined by its authority "to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1).

If you have any additional questions, please free to contact me at (202) 514-7300 or Kirk Manhardt at (202) 353-0541.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jeanne E. Davidson by Kirk Manhardt".

Jeanne E. Davidson

Director

Commercial Litigation Branch