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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-194016

MAY 04 1979

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PN
Albert S. Freedman
d/b/a Reliable Security Services
2301 Second Avenue
Seattle, Washington 98121

DO NOT make available to public reading

DLG 01572 ✓

Dear Mr. Freedman:

We have received your recent letter containing additional allegations of improprieties by the current holder of a security guard contract at the United States Public Health Hospital, Seattle, Washington.

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With regard to your statements concerning non-performance by the contractor, as we explained in our decision B-194016, February 16, 1979, these are matters of contract administration and as such are not for resolution under our Bid Protest Procedures. However, as stated in the decision, a copy of your original letter was brought to the attention of the Secretary of Health, Education, and Welfare.

You also ask whether a "contractor's unsatisfied, current and on-going federal tax lien at the time of bid and award violates the statutory, regulatory and/or other legal requirements under your jurisdiction."

We are aware of no statute or regulation which specifically prohibits a contractor who has an outstanding tax lien from receiving an award. However, a contracting officer must precede the award of a contract with an affirmative determination



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that the contractor is responsible; that is, the contractor's financial resources, equipment, ability, past performance and integrity indicate it can successfully perform the contract. The existence of an outstanding unsatisfied tax lien is one factor which should be considered by the contracting officer in determining the responsibility of the potential awardee. See Federal Procurement Regulations, subpart 1-1.12.

Affirmative responsibility determinations involve subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties which result from a contractor's inability to perform. For this reason, we have declined to review such determinations absent either a question of compliance by a bidder with definitive guidelines or a showing of fraud, timely raised in accordance with our Bid Protest Procedures.

We trust this answers your inquiry.

Sincerely yours,

LS
Ronald Berger
Assistant General Counsel