

DECISION



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

60594

FILE: B-185830

DATE: March 2, 1976

98529

MATTER OF: Cottrell Engineering Corporation; Barnegat Bay
Dredging Co., Inc.

DIGEST:

1. Protest which questions small business status of another bidder is matter for consideration by SBA under 15 U.S.C. § 637(b)(6) (1970).
2. Where small business size protest is filed with contracting officer more than 5 working days following bid opening there is no requirement that award be withheld pending size determination by Small Business Administration. See ASPR § 1-703(b)(1)(b).
3. Whether contractor needs certificate of authority from State Corporation Commission to perform Federal contract is matter for resolution between contractor and local authorities and failure to possess State and local licenses is not bar to receiving award.

Cottrell Engineering Corporation (Cottrell) and Barnegat Bay Dredging Co., Inc., have protested against the award to K.P. and B. Company under invitation for bids No. DACW65-76-B-0008 issued by the United States Army Engineers District, Norfolk, Virginia.

The protests are based on the allegations that K.P. and B. is not independently owned and operated, is dominant in its field of operation and, because of affiliation with another firm, has more than 500 employees, and is, therefore, not a small business within the applicable Small Business Administration (SBA) regulations. Under 15 U.S.C. § 637(b)(6) (1970), the decision as to the size status of a concern is exclusively vested in the SBA and is not subject to review by our Office. Instron Corporation, B-184297, July 14, 1975, 75-2 CPD 34.

Additionally, Cottrell argues that the contracting officer made award to K.P. and B. on February 2, 1976, after Cottrell had filed its size protest on January 30, 1976, with the contracting officer. Under the applicable SBA regulations and Armed Services

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Procurement Regulation (ASPR), a size protest, to be timely, must be filed within 5 working days following bid opening. As bids were opened on January 15, the protest was untimely and award need not be withheld pending a SBA size determination. ASPR § 1-703(b)(1)(b) (1975 ed.).

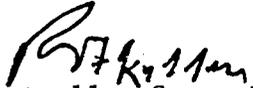
Also, Cottrell contends that award was made after its protest was filed with our Office in contravention of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)). While Cottrell's initial protest was dated January 30, 1976, it was not received at our Office until the afternoon of February 2, 1976; and our Office notified the agency of the protest on February 3, 1976, in accordance with § 20.3(a) of our procedures. Therefore, the agency had already made the award when it received notification of the protest.

Finally, Cottrell alleges that K.P. and B. does not possess a certificate of authority from the State Corporation Commission to transact business in the State of Virginia as required by section 13.1-102 of the Code of Virginia.

In general, the question regarding a bidder's legal capacity to perform under State or local law is a matter for resolution between the State or local authority and the potential contractor. If a State or locality determines that under its laws a Federal contractor must have a license or a permit as a prerequisite to its being legally capable of performing the required services for the Federal Government within the State's or locality's boundaries, the State or locality may enforce its requirements against the bidder, provided the application of the law or ordinance is not opposed to or in conflict with Federal policies or laws, or does not in any way interfere with the execution of Federal powers. See Charles Paul v. United States, 371 U. S. 245 (1963). In those instances where the requirements of a State law or local ordinance do not violate this proviso, the State or locality may proceed to enforce its requirements against a contractor who failed to comply. However, if as a result of enforcement by the State or locality, the contractor chooses not to perform the contract or is prohibited from doing so by an injunction, the contractor may be found in default and the contract terminated to its prejudice. 53 Comp. Gen. 36, 38 (1973); and 54 Comp. Gen. 480 (1974).

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Accordingly, the protests are denied.


Deputy Comptroller General
of the United States