

**DECISION**



PL-1 13492  
Mr. Fitzmaurice  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest Against Nonresponsibility Determination]*

FILE: B-197663

DATE: April 21, 1980

MATTER OF: Alderson Reporting

D 4027

D 3519

DIGEST:

A 408

Contracting agency's determination that small business concern, otherwise in line for award, was nonresponsible because of poor performance on prior contract and concern's guilty plea to antitrust violation must be referred to Small Business Administration for consideration under certificate of competency program.

Alderson Reporting (Alderson) protests the award of a contract to CSA Reporting Corporation (CSA) for stenographic reporting services covering fiscal year 1980 awarded by the National Mediation Board (NMB).

Three bids were received in response to NMB's invitation for bids, and Alderson was low. However, the contracting officer determined Alderson to be nonresponsible. As a result, the contract was awarded to CSA, the next low bidder.

The contracting officer based the determination of nonresponsibility on the following grounds. Alderson's performance on an earlier contract (fiscal year 1978) had not been satisfactory. On several occasions, Alderson failed to meet deadlines for the production of transcripts, and transcripts often contained errors. Alderson had been the subject of a grand jury investigation concerning price fixing and bid rigging among Washington, D.C.-based stenographic reporting firms; in connection with this investigation, Alderson pleaded guilty to a felony antitrust violation.

Alderson argues that as a small business it has a right to have the question of its responsibility referred to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). Therefore, it requests that our Office direct NMB to refer the matter to SBA. If SBA issues a

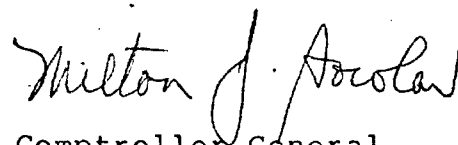
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COC, and if at that time Alderson is willing to accept a contract, Alderson believes that NMB must terminate the contract with CSA and award one to Alderson for the balance of the contract term.

We agree with Alderson. Under the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I, 1977), the SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of responsibility. See, Hatcher Waste Disposal, B-193065, March 7, 1979, 79-1 CPD 157; Federal Procurement Regulations § 1-1.708 (1964 ed. amend. 192). Moreover, there are no exceptions to SBA's authority to determine the responsibility of a small business. Opalack & Company, B-193634, May 8, 1979, 79-1 CPD 319. Thus, whenever a contracting officer believes that a small business is nonresponsible, the matter must be referred to SBA for a final disposition.

Therefore, by letter of today to the Chairman, NMB, we are recommending that the contracting officer immediately refer the matter to the appropriate SBA officials for possible issuance of a COC. If a COC is issued, and Alderson accepts award for the balance of the contract term, the current contract should be terminated for the convenience of the Government. If a COC is not issued, or Alderson refuses such an award, no further action is required.

Protest sustained.



Acting Comptroller General  
of the United States



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

B-197663

April 21, 1980

The Honorable Robert O. Harris  
Chairman, National Mediation Board  
Washington, D.C. 20572

Dear Mr. Chairman:

Enclosed is a copy of our decision of today in the matter of Alderson Reporting.

The decision recommends that the question of Alderson's responsibility be referred to the Small Business Administration for consideration under the certificate of competency program. We would appreciate being advised of the action taken on this recommendation.

Sincerely yours,

A handwritten signature in dark ink, reading "Milton J. Fowler", is written over the typed name.

Acting Comptroller General  
of the United States

Enclosure