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DECISION



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

FILE: B-203387

DATE: June 16, 1982

MATTER OF: Southwest Aircraft Services

DIGEST:

1. While agency need not indefinitely withhold award of a contract to another bidder beyond required 15-day period which regulation provides the Small Business Administration (SBA) for processing a Certificate of Competency (COC), agency's revocation of prior oral extension without reasonable notice to SBA unfairly deprived protester, which had no part in misunderstanding between the agencies, of proper consideration of its COC application.
2. Claim for bid preparation costs is denied where claimant has not shown there was substantial chance SBA would have granted COC which was necessary prerequisite for award to protester.

Southwest Aircraft Services, Inc., a small business firm, protests the rejection of its low bid submitted in response to invitation for bids (IFB) No. F04607-81-B-0010 issued by the U.S. Air Force, Norton Air Force Base, California. Southwest also requests reimbursement of its bid preparation costs. Southwest contends the Air Force awarded the contract for aircraft cleaning services to a higher bidder at a time it knew the Small Business Administration (SBA) would in all likelihood issue Southwest a Certificate of Competency (COC). We sustain the protest.

After opening the two bids received on February 13, 1981, a preaward survey was performed to determine Southwest's responsibility. The survey report recommended that award not be made to Southwest because of

that firm's unsatisfactory financial capability, labor resources, quality assurance, performance record, and ability to meet the required schedule. The contracting officer found Southwest nonresponsible on April 7, and on the same day, referred the matter to the SBA pursuant to Defense Acquisition Regulation (DAR) § 1-705.4 so that Southwest could be considered for a COC.

By letter of April 17, SBA informed the Air Force that Southwest would file for a COC and that its application would be considered on the basis that Southwest was "responsive and responsible" in all areas except capacity. The SBA also stated that it would make its decision by May 8. The Air Force pointed out in an April 21 letter that its submittal to SBA indicated capacity was only one of several deficiencies. SBA then amended its letter of April 17 to include "credit" with capacity in its determination. The May 8 date remained unchanged, but on April 22, SBA orally requested and received an extension to May 13 because, according to the Air Force, SBA wanted to consolidate data gathering for two of Southwest's COC referrals.

By letter of April 22, received by the Air Force on April 27, the SBA confirmed the extension to May 13 but stated the purpose of the extension was to give Southwest additional time to submit its COC application. Southwest submitted its application to SBA on April 29. On May 6, the Air Force wrote SBA denying it had granted any extension for the purpose of granting Southwest additional time to file and stating that it would proceed with the award unless a COC was issued prior to close of business on May 8. When the Air Force did not hear from SBA by May 8, it made an award to the other bidder and SBA closed its case without a decision on the COC.

Southwest contends it should not suffer because of a misunderstanding between two agencies and that the Air Force should have corrected the misunderstanding by telephone rather than waiting until two days before May 8 to do so by letter. Southwest further contends that, as shown by the Air Force delays since bid opening, there was no urgency justifying the Air Force's denial of the extension of three working days and that the Air Force was determined not to make award to Southwest under any circumstances. Southwest also argues its previous performance record has been satisfactory except for one prior default termination,

which has been appealed to the Armed Services Board of Contract Appeals. The protester maintains that the Air Force was unreasonable in determining Southwest nonresponsible based on this one instance and several minor deficiencies which occurred on other contracts under which Southwest received an overall satisfactory rating.

While an agency is bound by the SBA's final determination of responsibility pursuant to SBA's COC proceedings, 15 U.S.C. § 637(b)(7)(a) (Supp. III 1979), it need not indefinitely withhold award to another responsible bidder pending SBA's decision on the COC. Diesel Energy Systems Co., B-203781, July 8, 1981, 81-2 CPD 24. In this regard, the regulation requires that award be withheld until SBA act on concerning the issuance of a COC or until 15 working days after SBA is notified of the request for a COC, whichever is earlier, DAR § 1-705.4(c). Thus, after the 15-day period has expired, the agency may properly make an award to another bidder if SBA has not acted on the COC. The granting of an extension beyond the 15-day period for filing or processing a COC application is a matter within the discretion of the contracting agency. Greenbrier Industries, Inc., B-191380, April 24, 1978, 78-1 CPD 315.

In this case, however, the Air Force had granted an extension, albeit orally, until May 13. Although the Air Force feels that the extension was granted based on misinformation furnished by SBA, once it had granted the extension we think it was incumbent on the Air Force to give the SBA reasonable advance notice of its decision to revoke the extension so that SBA could, if feasible, expedite its COC process or request the Air Force to reconsider its position. The Air Force's May 6 letter, even if received the next day, foreclosed this option to SBA and unfairly deprived Southwest, which had no part in the misunderstanding, of proper consideration of its COC application.

We sustain this protest.

We have been informed, however, by the Air Force that when the original awardee appealed a default termination, the termination was converted in January of this year to one, for the convenience of the Government and that the next low bidder was awarded a contract which expires on September 30, 1982. At that time, it is the present intention of the Air Force to exercise an option for another fiscal

year. We do not think it would be in the best interest of the Government to terminate the second contract at this time, but we are recommending by letter of today to the Secretary of the Air Force that a new solicitation be issued for the services if required for the next fiscal year beginning on October 1, 1982 and that the option in the current contract not be exercised.

However, we find no legal basis upon which reimbursement of Southwest's bid preparation costs could be based. There is no evidence in the record to support Southwest's contention that there was any certainty that SBA would issue the COC. An essential element of recovery of such costs is a showing that the claimant had a substantial chance of being awarded the contract. See Decision Sciences Corporation--Claim for Proposal Preparation Costs, 60 Comp. Gen. 36 (1980), 80-2 CPD 298. In our opinion, such a showing has not been made here.

for *Larry D. Van Cline*
Comptroller General
of the United States