

**DECISION**

*Seidman-Kingsbury*  
23236

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

FILE: B-207277.3

DATE: September 30, 1982

MATTER OF: Cecile Industries, Inc.

**DIGEST:**

1. Where a certificate of competency was denied after a preaward survey that showed that the prospective contractor could not supply the full number of items solicited, but subsequently the agency decided that a partial award was in order, the agency may request a new preaward survey to judge the firm's capability to supply the lesser amount.
2. Agency did not act improperly by requesting the Small Business Administration to suspend action on the second low bidder's request for a certificate of competency pending a resurvey of the low bidder's responsibility, since the second low bidder will no longer be in line for award if the low bidder is found responsible.
3. Since expiration of a bid acceptance period confers on the bidder a right to refuse to perform a contract subsequently offered a bidder generally may waive such right if, following expiration of the acceptance period, the bidder is still willing to accept an award on the basis of the bid as submitted.

Cecile Industries, Inc. protests the possible award of a contract for sleeping bags to Fancy Industries under invitation for bids No. DLA100-82-B-0397, issued by the Defense Logistics Agency (DLA). We summarily deny the protest.

The IFB requested bids on three separate quantities of sleeping bags, which were each to be shipped to different destinations. Fancy was low bidder on all three quantities. However, a preaward survey on

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Fancy resulted in a finding that the firm was non-responsible. Upon review, the Small Business Administration (SBA) declined to issue a certificate of competency (COC).

Tennier Industries was second low bidder on two of the quantities (a total of 74,400 sleeping bags) and Cecile was second low bidder on the third quantity (49,600 sleeping bags). Cecile, however, was found nonresponsible after a Defense Contract Administration Services Region (DCASR) preaward survey. The company was attempting to obtain a COC when DLA received a Congressional request for a new preaward survey on Fancy. DLA agreed to the resurvey and asked the SBA to suspend action on Cecile's COC request.

Cecile protests the resurvey of Fancy. It also protests the SBA's suspension of action on its COC request.

It is our informal understanding that the first preaward survey considered Fancy's ability to supply all three quantities of sleeping bags, a total of 124,000 bags. In contrast, the resurvey will consider Fancy's ability to perform with respect to only one of those quantities--the 49,600 sleeping bags for which no award has yet been made. We know of nothing that precludes a second preaward survey in such a situation. Cf. Reuben Garment International Co., Inc., B-198923, September 11, 1980, 80-2 CPD 191 (where we stated that the denial of a COC by the SBA is not necessarily dispositive if before award new information about the bidder's responsibility comes to light).

Further, since a change in the previous determination that Fancy was not a responsible bidder would mean that Cecile is no longer in line for award, there was nothing improper in DLA's request that SBA suspend action on Cecile's COC request. See Henry Spen & Company, Inc., B-183164, January 27, 1976, 76-1 CPD 46.

Cecile also argues that Fancy's bid cannot be accepted for award in any event because the bid acceptance period has run out. However, since expiration of the acceptance period confers on the bidder

the right to refuse to perform a contract subsequently offered, a bidder generally may waive such right if, following expiration of the acceptance period, the bidder is still willing to accept an award on the basis of the bid as submitted. Isometrics, Inc., B-204556, April 13, 1982, 82-1 CPD 340.

Because it is clear from the protester's initial submission that the protest is without legal merit, we have reached our decision without obtaining a written report from the agency. The Mark Twain Hotel, B-205034, October 28, 1981, 81-2 CPD 361.

The protest is summarily denied.

*Jerry D. Can Clev*  
for Comptroller General  
of the United States