

DECISION

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

30942

FILE: B-217258 **DATE:** April 9, 1985
MATTER OF: SALJ of America, Inc.

DIGEST:

1. Where a small business bidder is found by the contracting agency to be nonresponsive, and fails to timely file for a certificate of competency, the agency properly may make award to the next low responsive, responsible bidder.
2. Protester's burden of proving that it was granted an extension to file a COC application is not met by its mere unsupported assertion to that effect where both the contracting agency and SBA deny granting an extension.

SALJ of America, Inc. (SALJ), protests the award of a contract to the second low bidder under invitation for bids (IFB) No. DAAE07-84-B-A635, issued by the Department of the Army for a quantity of armoured vehicle launched bridge launcher kits. SALJ, the low bidder and a small business, alleges that it improperly was denied an extension of time to file a certificate of competency (COC) application with the Small Business Administration (SBA). We dismiss the protest.

The Army determined SALJ nonresponsive based on a preaward survey which found SALJ unsatisfactory with regard to production management, planning and scheduling, and financial capability. Since SALJ certified itself as a small business, the Army referred the matter to SBA for a COC determination. Although SBA notified SALJ by letter dated October 9, 1984, that the application had to be filed no later than October 16, 1984, SALJ did not file the COC application by the required date. SALJ maintains that someone at the contracting activity granted it an extension of the filing deadline until November 14, 1984, but the Army denies that it granted or even discussed giving SALJ an extension. SBA also states that it never granted SALJ an extension. Because SALJ did not file the COC application by the due date, the SBA notified SALJ and the Army by letter of October 19, 1984, that its file was closed and that no

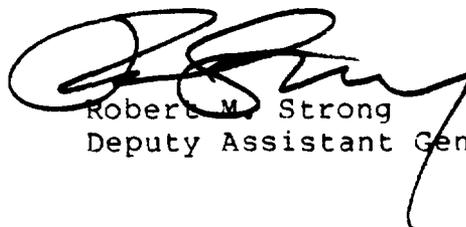
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COC would be issued. The Army subsequently rejected SALJ's bid on the basis that SALJ was nonresponsible and made award to the next low bidder on November 14, 1984.

It is the responsibility of the small business firm determined to be nonresponsible to timely file a complete and acceptable COC application with the SBA. Okaw Industries, Inc., B-214481, Mar. 13, 1984, 84-1 C.P.D. ¶ 307. Where a small business does not timely avail itself of this COC procedure, and a COC thus is not issued, the agency properly may proceed to make award to the next low responsive, responsible bidder. See generally, Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.602-4(c) (1984). This is the course the Army followed here. Our Office also has no authority to require the SBA to issue a COC or to reopen a case when a COC has been denied. Z.A.N. Company, B-185740, Mar. 4, 1976, 76-1 C.P.D. ¶ 157.

Although the protester alleges that it was granted an extension to file for the COC, it has produced no documentary evidence to this effect, and both the agency and the SBA deny granting any extension. Since the only evidence as to this disputed fact is the contradictory statements of the protester and the contracting activity, SALJ has not met its burden of affirmatively proving its case on this point. See Information Design, Inc., B-214493.2, Oct. 23, 1984, 84-2 C.P.D. ¶ 447. We point out that there is no requirement that a small business be granted an extension; the decision whether to grant an extension is solely within the discretion of the contracting agency and the SBA. See FAR, 48 C.F.R. § 19.602-2(a). GAO therefore will not review a refusal to grant a filing extension.

The protest is dismissed.



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