

**DECISION**

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

**FILE:**

B-222424

**DATE:** April 7, 1986**MATTER OF:** Midwest Security Agency, Inc.**DIGEST:**

1. A requirement in a small business set-aside solicitation that bidders submit with their bids evidence that they have, or have applied for necessary and local licenses involves a matter of responsibility, and an allegation that the awardee did not comply with the requirement is for resolution by the contracting agency and the Small Business Administration under certificate of competency procedures, not the General Accounting Office.
2. Protester's allegation that the Small Business Administration (SBA) improperly issued a certificate of competency for the awardee in the face of evidence that the awardee was not qualified is dismissed where protester has provided no evidence that SBA, which has the statutory authority to determine conclusively a small firm's responsibility, acted fraudulently or in bad faith or disregarded material information. Fact that agency allowed extra time for awardee to satisfy responsibility requirements does not indicate bad faith; such agency decisions are within their discretion.

Midwest Security Agency, Inc. protests the issuance of a certificate of competency (COC) for Eastern Maintenance and Service, Inc. by the Small Business Administration (SBA) and the award of a contract to Eastern by the General Services Administration (GSA) under invitation for bids (IFB) No. GS-05B-42600. Midwest, the incumbent contractor and a bidder for the new contract for guard services, contends that Eastern was not properly licensed and was not competent to perform the required services because of its lack of experience and qualifications. Midwest further contends that SBA improperly issued the COC in the face of all available evidence showing that Eastern was not qualified.

We dismiss the protest.

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The solicitation required that the contractor and its security guard employees be licensed in the States of Illinois and Indiana. It also required prospective contractors to furnish evidence of having the appropriate licenses or of having made application for them, and requested that such evidence be submitted with the bid.

This licensing requirement concerns bidder responsibility. Carolina Waste Systems, Inc., B-215869.3, Jan. 7, 1985, 85-1 CPD ¶ 22; Day Detectives, Inc., B-208312.2, Oct. 28, 1982, 82-2 CPD ¶ 379. Similarly, the challenge to Eastern's competence, experience and qualifications also raises an issue of Eastern's responsibility as a prospective contractor. See Owl Resources Co., B-210094, Apr. 29, 1983, 83-1 CPD ¶ 461.

When an agency makes a determination that a small business firm is nonresponsible, as apparently happened here, it is required by law to refer that determination to SBA for consideration under SBA's COC procedures. The statutory authority to review such determinations belongs to SBA, not our Office, and SBA's determination to issue or refuse to issue a COC is conclusive with respect to all aspects of the firm's responsibility. 15 U.S.C. § 637(b)(7)(A) (1982); Federal Acquisition Regulation, 48 C.F.R. subpt. 19.6 (1984). Consequently, unless a protester makes a prima facie showing of fraud or bad faith, or demonstrates that SBA failed to consider material information in reaching its decision, our Office will not review SBA determinations concerning the issuance of a COC. White's Shopping Service, Inc., B-215199, July 20, 1984, 84-2 CPD ¶ 71.

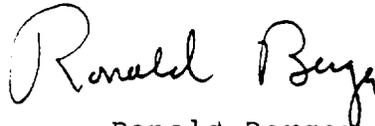
Here, Midwest alleges that GSA "broke or bent its rules and violated its established procedures" in order to make an award to Eastern. Midwest supports this allegation by stating that GSA, in collusion with SBA, asked for extensions in the bid acceptance period "in a calculated course of conduct for the purpose of enabling Eastern to cure bid defects so that the award could be steered to Eastern." The protester also asserts that SBA issued the COC in total disregard of Eastern's lack of the qualifications and ability to perform the contract.

To establish bad faith, the courts and our Office require the presentation of virtually irrefutable proof that government officials had a specific and malicious intent to injure the protester. A.R.E. Mfg. Co., B-217515, et al., Feb. 7, 1985, 85-1 CPD ¶ 162. Midwest falls far short of meeting this standard. Midwest has not

shown which rules or procedures were violated by GSA's requests for bid acceptance extensions, and we know of none. In fact, we have held that a bid extension request to permit a bidder to satisfy responsibility requirements is within the agency's discretion. See Right Away Foods Corp., B-216199, Jan. 3, 1985, 85-1 CPD ¶ 15. We simply find no basis to conclude that GSA's request for bid acceptance period extensions demonstrates that either GSA or SBA specifically intended to injure Midwest.<sup>1/</sup> Moreover, while Midwest obviously disagrees with SBA's COC determination based on the information before it, there is no evidence indicating that SBA overlooked material information. In fact, Midwest notes that the issuance of the COC was a matter that was fully discussed by GSA and SBA.

There is an implication in Midwest's allegations that the discussions between GSA and SBA concerning issuance of the COC were somehow improper. We have found, however, that communications between SBA and agencies concerning the issuance of a COC, including discussions which may influence the SBA's decision, are not improper. See The Swanson Assocs., B-220088.2, et al., Oct. 8, 1985, 85-2 CPD ¶ 396. Accordingly, we find no merit to Midwest's position.

The protest is dismissed.



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General Counsel

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<sup>1/</sup> We also note that Midwest's assertion that GSA resorted to improper measures to "steer" the award to Eastern is inconsistent with the agency's determination that Eastern was nonresponsible in the first place.