

DECISION

DIGEST - L - Cont
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

792 CPD 294

692

FILE: B-196051

DATE: October 25, 1979

MATTER OF: Gupta Carpet Professionals, Inc.

DIGEST:

1. As matter of law, contract may be awarded only to responsible bidder. When contracting officer determines that small business is not responsible, matter must be referred to Small Business Administration, which conclusively determines bidder's responsibility by issuing or refusing to issue Certificate of Responsibility.
2. GAO will not review Small Business Administration's refusal to issue Certificate of Competency unless there is prima facie showing of fraud or information vital to responsibility determination has not been considered.
3. Although in certain circumstances GAO will award bid preparation costs, there is no legal basis for allowing unsuccessful bidder anticipated profits.

Gupta Carpet Professionals, Inc. (Gupta), requests a "hearing" with regard to the award of a contract for installation of carpet tiles at the Defense Industrial Supply Center, Philadelphia, Pennsylvania, under solicitation No. GSD-3DPR-90003-A, issued by the General Services Administration (GSA).

Gupta indicates that it was the low bidder for that contract; that upon request it verified its price of \$36,056.80; and that it seeks \$8,085.10 in profits which it believes it lost due to the contracting officer's finding of nonresponsibility and the subsequent refusal of the Small Business Administration (SBA) to issue a Certificate of Competency (COC).

Correspondence submitted with Gupta's protest indicates that the SBA found that firm needed to improve its production control system to insure more timely and successful completion of orders on current contracts. Gupta appealed that decision, advising SBA that although there had been delivery problems with its cleaning contract, there had been no such problems with installation. The SBA, however, stated that it could not reopen the case unless the contracting officer made a new referral. This has not been done; rather, GSA awarded the contract to Victor Rug Company on August 30, 1979.

Under the law, a contract may only be awarded to a responsible bidder--that is, one who is capable of performing the contract in accord with its terms and provisions. See 41 U.S.C. § 253(b)(1) (1976). When a contracting officer determines that a small business is not responsible, the matter must be referred to SBA, which conclusively determines the bidder's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7)(A) (Supp. I 1977).

Our Office generally does not review SBA determinations unless there is a prima facie showing of fraud or that information vital to a responsibility determination has not been considered. See Old Hickory Services, B-192906.24 February 9, 1979, 79-1 CPD 92; JBS Construction Company, B-187574.44 January 31, 1977, 77-1 CPD 79, and cases cited therein. We do not believe either of these exceptions applies in this case.

In view of this finding, we must decline Gupta's request for a hearing and dismiss the protest. See generally United Security, Inc., B-194868, B-194870, June 21, 1979, 79-1 CPD 446. Although in certain circumstances not present here we will award bid preparation costs, there is no legal basis for allowing an

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unsuccessful bidder anticipated profits, United
Telecontrol Electronics, Inc., B-191981, February 14,
1979, 79-1 CPD 104.

Milton J. Socolar
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General Counsel