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DECISION



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

FILE: B-203603.2

DATE: August 18, 1981

MATTER OF: Burgess, Inc.-- Reconsideration

DIGEST:

Agency's request for bid extension from bidder does not suggest that agency's denial of extension of time for Small Business Administration (SBA) to consider information bearing on bidder's responsibility was motivated by bad faith. Consequently, original decision dismissing protest of denial of certificate of competency is affirmed.

Burgess, Inc. (Burgess) has requested reconsideration of our decision Burgess, Inc., B-203603, June 30, 1981, 81-1 CPD 547, in which we declined to consider the firm's protest of the Air Force's determination that Burgess was not a responsible bidder where the Small Business Administration (SBA) refused to issue a certificate of competency (COC). Burgess' request for reconsideration is based on its belief that there is evidence of bad faith on the part of the contracting agency.

We find no reason to disturb our original decision.

The SBA did not issue the COC because Burgess had submitted outdated financial information for SBA's consideration. Updated information was not considered because the Air Force had advised the SBA that it could not wait beyond the minimum 15 days it was required to wait before award could be made. See Defense Acquisition Regulation § 1-705.4(c) (1976 ed.).

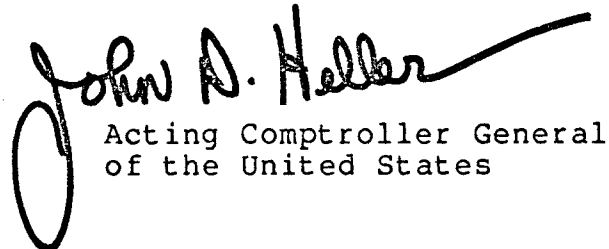
As we stated in the decision, our Office will not review SBA's refusal to issue a COC absent a showing of fraud or bad faith. We found no implication of fraud or bad faith in either the SBA's refusal to issue a COC or the Air Force's refusal to wait beyond the required 15

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days to make an award. Therefore, we declined to consider the matter further. Burgess now asserts that the Air Force acted in bad faith by asking Burgess to extend its bid acceptance period at the same time that the agency was denying the SBA additional time to consider the updated financial material.

To support a finding of bad faith, the record must contain irrefutable proof that the agency had a malicious and specific intent to injure the party alleging bad faith. Kalvar Corporation, Inc. v. United States, 543 F.2d 1298, 1301 (Ct. Cl. 1976); Honeywell Information Systems, Inc.--Reconsideration, B-193177.2, January 19, 1981, 81-1 CPD 26. We do not see how bad faith is suggested by the facts asserted by Burgess. The Air Force was under no legal obligation to grant the SBA a time extension past the required 15 days, nor was the Air Force responsible for the SBA's receiving outdated financial information. The fact that the Air Force requested Burgess to extend its bid while the agency also was deciding to refuse to grant an extension to the SBA does not in any way suggest that the refusal reflected a malicious intent to injure Burgess, and we see nothing in the request for reconsideration which suggests that Burgess could establish that such was the case.

The earlier decision is affirmed.

A handwritten signature in black ink, reading "John D. Heller". The signature is written in a cursive style with a large, looped initial "J".

Acting Comptroller General
of the United States