

# DECISION



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

15646

FILE: B-199860, B-199907

DATE: December 10, 1980

MATTER OF: Security Unlimited Enterprises, Inc. DLG03028

## DIGEST:

- [Protest Alleging that]
1. Protester's allegations without evidence (contracting officer relied on false and unreliable information and was biased) are rejected as speculative.
  2. Agency did not act improperly in awarding contracts to next bidders in line for award where small business low bidder was found to be nonresponsible and Small Business Administration (SBA) was unable to process certificate of competency (COC) prior to date established for start of performance which was beyond 15-day period for processing COC set forth in Federal Procurement Regulations § 1-1.708-2(a)(5) (1964 ed. amend 192).
  3. Under 15 U.S.C. § 637(b)(7) (1976 & Supp. I (1977)), SBA has authority to conclusively determine that small business concern is responsible. GAO generally will not review SBA determination to require issuance of COC or to reopen a case where COC has been denied absent prima facie showing of fraud or willful disregard of facts. Since SBA was provided opportunity to determine matter and agency properly made award, it is not appropriate for GAO to consider small business concern's responsibility.

Security Unlimited Enterprises, Inc. (Security), protests the General Services Administration's (GSA) rejection of its bids submitted pursuant to two invitations for bids (IFB), numbered PBS-9-PPB-80-0034 and PBS-9PPB-80-0047, and GSA's award of contracts thereunder. Both solicitations were total small business set-asides for guard services.

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Security was the low bidder for portions of each IFB. However, since the contracting officer (CO) found Security's financial capacity to be inadequate, based on an unsatisfactory financial survey by GSA's Credit and Finance Branch, the determination was made that Security was nonresponsible. The determination was based on Security's failure to provide an updated financial report and a cash flow statement. In addition, the Credit and Finance Branch had questions in regard to Security's relationship with American Financial Associates (AFA). AFA's letter of support for Security did not extend a definite line of credit, AFA did not confirm its financial capacity and the financial terms between Security and AFA were not provided even though requested by GSA.

On June 25, 1980, the CO referred the matter of Security's competency to the Small Business Administration (SBA). The SBA was advised that the IFB provided for performance to be effective August 1. Consequently, pursuant to Federal Procurement Regulations (FPR) § 1-1.708-2 (1964 ed. amend. 192), GSA stated that it would not award any contract prior to SBA's issuance of a certificate of competency (COC) or 15 working days after the SBA received notification of the referral. On July 24 and 25, the SBA notified GSA that, due to a size protest against the protester, it was unable to make the COC decision at that time. GSA on July 25, made contract awards to the low responsive, responsible bidders.

Security's protests are denied.

Security suggests that the CO acted on false and unreliable information; however, Security presents no evidence and states only that "this information was never directly presented to Security and could not, therefore, be confronted." In addition, Security asserts bias on the part of the contracting officer which is not supported by any evidence.

It is Security's responsibility to present evidence sufficient to affirmatively establish its position. See Dependable Janitorial Service and Supply, B-190231, January 3, 1978, 78-1 CPD 1. In the absence of probative evidence, we must reject Security's allegations

as speculative. In any event, when our Office gave Security an opportunity to comment on GSA's protest report detailing the basis for the nonresponsibility determination, Security offered no rebuttal thereto.

Security's final contention is that GSA's failure to await SBA's decision on the COC thwarted the purposes of the Small Business Act and implementing regulations which provide for an independent survey of small business' capacity and credit. The record indicates that GSA waited about 1 week in excess of 15 working days before it made the contract awards. FPR § 1-1.708-2(a)(5) (1964 ed. amend. 192) provides:

"If referral to SBA involves only competency and SBA has not issued a certificate of competency within 15 working days, the contracting officer may conclude that SBA has no objection to his determination of nonresponsibility and he may proceed to make an award."

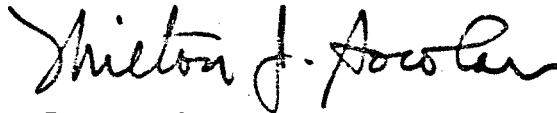
In this case, SBA was given the opportunity to decide the matter, but did not complete the process within the 15-day period; therefore, GSA did not act improperly in awarding the contracts after withholding award for a time in excess of the prescribed 15-day period. See Ken Com, Inc., B-195845, April 24, 1980, 80-1 CPD 294.

The SBA has the authority to conclusively determine that a small business concern is responsible. 15 U.S.C. § 637(b)(7) (1976 & Supp. I 1977)). This Office has no authority to review SBA's determination to require issuance of a COC, or to reopen a case where a COC has been denied unless the protester has made a prima facie showing of fraud or willful disregard of facts. See SMI/New York, Sweepster, Inc., B-194009, July 24, 1979, 79-2 CPD 55. Under the circumstances, since the agency authorized by law to determine Security's responsibility was given the required opportunity to do so, we do not believe it would be appropriate for us to now review the matter of Security's responsibility. See Ken Com, Inc., supra.

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Accordingly, Security's protests are denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the

Comptroller General  
of the United States