

DECISION



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

FILE: B-204198

DATE: May 5, 1982

MATTER OF: Young Patrol Service

DIGEST:

1. While award to a firm which after bid opening purchases the low bidding firm in order to become eligible for the award is prohibited by regulation, the low bidder's purchase of a firm which submitted a higher bid is unobjectionable. Whether the low bidder intends to use the facilities of the purchased firm to perform the contract or to obtain required licenses involves the bidder's responsibility, a matter to be determined by the contracting officer.
2. Allegations raised more than two months after agency provided protester with documents containing the bases of protest are untimely and not for consideration because protest allegations must be filed within 10 days after grounds of protest are known or should have been known. 4 C.F.R. § 21.2(b)(2).
3. Bid guarantee is sufficient where its terms clearly afford the Government the right to draw against the penal sum in the event of default on the bid.
4. Protest allegations concerning bond requirements which are to be implemented after contract award are matters of contract administration not cognizable under GAO's Bid Protest Procedures.

Young Patrol Service protests the award of a contract to Master Security Services under invitation for bids (IFB) No. PBS 9PPB-81-0045, issued by the General Services Administration (GSA) for guard services at various northern California locations. Young advances three reasons why it believes the award to Master was improper: Master escaped any "performance liabilities" under the contract by purchasing Nor-Cal Security, a higher bidder on the procurement; Master's bid guarantee was insufficient; and Master has not furnished the required performance bond. For the reasons set forth below, we deny the protest in part and dismiss it in part.

The record indicates that Master did not possess a license to perform guard services in California at the time of bid opening (June 9, 1981). The IFB required such a license so, upon learning it was the low bidder, Master, apparently attempting to acquire Nor-Cal's license, purchased that firm's assets on June 25. The license was not transferable, however, and Master proceeded to obtain its own license. Because another California firm was already doing business as Master Security Services, Master applied to operate under the name of Nor-Cal Security Services, and had its license issued in this name. Master received the award on July 15. Young suspects that Master purchased Nor-Cal not to acquire its license, but for the purpose of substituting Nor-Cal's performance of the contract for its own, thereby avoiding unspecified "performance liabilities."

Even assuming, arguendo, that Young's suspicions are accurate, we find nothing objectionable in Master's purchase of Nor-Cal or its use of Nor-Cal's facilities in performing the contract. As GSA points out, we have in the past disapproved bootstrapping arrangements whereby a firm attempts to become eligible for award by purchasing the assets of the low bidder. 51 Comp. Gen. 145 (1971). Award to such firms is prohibited by Federal Procurement Regulations § 1-2.404-2(h). This prohibition does not apply here; Master was the low bidder, and it received the award at its bid price. The fact that Master may have purchased Nor-Cal to use its resources to perform the contract or to obtain the necessary license pertains to Master's ability to perform the contract, a matter of bidder responsibility. The contracting officer was aware of Master's purchase of Nor-Cal and, by awarding the contract to Master, affirmatively determined Master to be responsible.

See Global Crane Institute, B-204555, September 18, 1981, 81-2 CPD 226. Our Office does not review such determinations in the absence of a showing of fraud on the part of procuring officials or an allegation of failure to apply definitive responsibility criteria. Id. Neither is present here.

Under the IFB, bidders were required to furnish with their bids a bid guarantee in the amount of 20 percent of the first year bid price. In response to this requirement, Master submitted a telegraphic irrevocable letter of credit dated June 8. Young argues that this letter of credit was defective because it did not bear an authorized authentication as required by Uniform Commercial Code § 5-104(2), and because it named Master Security Company as the principal instead of Master Security Services, the name under which the bid was submitted. These objections were not raised by Young until December 29, however, in its comments on GSA's report. The information on which these objections are based--a copy of Master's letter of credit--was received by Young on October 14, 1981 pursuant to its September 22 Freedom of Information Act request.¹ Our protest procedures require that protest allegations be presented to our Office not later than 10 days after the basis of the allegation was known or should have been known. Since these two alleged defects in Master's bid guarantee were not raised until more than two months after Young should have been aware of them, they are untimely and will not be considered. Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49.

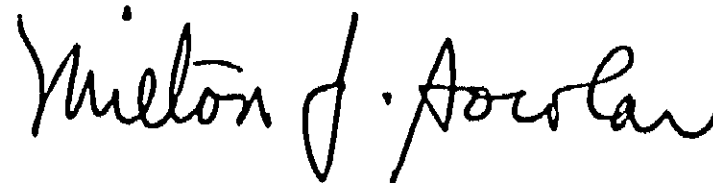
Young, in its earlier protest submissions, also argued that Master's letter of credit was defective for failing to set forth a statement of its purpose and the penal amount. The letter of credit contained in the record sets forth the penal sum of \$215,000. It also states that the funds will be available to GSA "by [their] draft on us

¹ Although it appears that Young received only one of two of Master's letter of credit documents dated June 8, 1981, the copy received sets forth the information on which these allegations are based.

at sight accompanied by evidence of invitation for bid No. PBS 9PPB-81-0045." While this may not constitute a statement of purpose, it clearly affords GSA the right to draw against the penal sum in the event of default on Master's bid under this IFB. Accordingly, the protest on this issue is denied. See generally Juanita H. Burns and George M. Sobley, 55 Comp. Gen. 587 (1975), 75-2 CPD 400.

Young finally contends that Master failed to submit an adequate performance bond. We consistently have held that questions regarding bond requirements which are to be implemented after contract award, including the question of whether the contracting agency should terminate the contract because of the contractor's failure to fulfill its contractual obligation, are matters of contract administration not cognizable under our protest procedures. See J and J Maintenance, Inc., B-202408, March 23, 1981, 81-1 CPD 219.

This protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States