

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

B-177504

January 23, 1973

Progress Equipment Corporation  
22-44 33rd Street  
Long Island City, New York 11105

Attention: Mrs. R. L. Kramer  
President

Gentlemen:

This is in reply to your telegram dated November 20, 1972, and subsequent correspondence, protesting the award of a contract to any other firm under IFB DAAA09-72-B-0160, issued by the U. S. Army Ammunition Procurement and Supply Agency, Joliet, Illinois.

Essentially, you contend that the action by the Defense Contract Administration Services, Region, New York, in rendering an unfavorable preaward survey was the result of collusion and the procuring activity's determination of nonresponsibility was erroneous. It is your position that the procuring activity employed delaying tactics for the purpose of fraudulently denying you a contract. You also argue that the reasons given by the Small Business Administration (SBA) for its denial of a certificate of competency (COC) are groundless and are based upon inaccurately reported information, misunderstood information and inaccurate conclusions. It is your opinion that the decision by the SBA should be reversed.

Since your correspondence in this matter was received prior to contract award or receipt of any indication that award was required to be made prior to resolution of the protest, we transmitted copies thereof for consideration by the Army and SBA. On December 18 we were advised by the Army that contract awards to other firms were required to be made by December 22, 1972, because of the urgent need for the items and because such action would be in the Government's best interests, notwithstanding the protest. On that same date we were also advised by SBA that notwithstanding your contentions it would remain firm in its refusal to issue a COC.

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This Office does not have authority to compel SBA to either review its prior decision or to reopen the matter on the basis of new evidence. 51 Comp. Gen. 448, 451 (1972). Neither do we review SBA determinations in such matters, or have the authority to require the issuance of a COC. B-175970, July 18, 1972.

In view of the foregoing, we must regard the refusal of SBA to issue a COC as persuasive with respect to the competency of your company to perform the instant contract, and as an affirmation of the contracting officer's determination of nonresponsibility. 43 Comp. Gen. 228 (1963). Accordingly, your protest against the determination of nonresponsibility and the refusal by SBA to issue a COC must be denied.

By letter of December 29, 1972, you question the validity of the determination to proceed with the contract award prior to resolution of the protest. In addition, you believe the Army acted erroneously when it permitted one of the successful bidders to extend its bid acceptance time for only the smaller quantity ranges advertised, thereby relinquishing the benefit of its lower prices on the larger quantity ranges. You note that this resulted in the Government paying a higher price, since in order to obtain the desired quantity it had to award a contract at the higher price bid on the smaller quantity range and then proceed to exercise its option to purchase additional quantities for the price bid on the smaller quantity range. You contend that the Government should have permitted this bidder only to extend the bid acceptance time for all of the ranges, and that doing otherwise resulted in "illegal manipulations" monetarily benefiting this contractor.

With regard to the decision to proceed with contract award notwithstanding your protest, we are advised that such action was necessary because the items are urgently required in South East Asia and have been assigned a high (02) priority designator. In such circumstances, Armed Services Procurement Regulation 2-407.8(b) authorizes the making of a contract award prior to resolution of the protest. While you have questioned whether an urgent need actually exists, you have submitted no convincing evidence or arguments in support of your position. We must therefore accept the (02) priority designator at its face value.

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As to your question regarding the propriety of permitting a successful bidder to extend its bid acceptance time only for some of the quantity ranges included in its original bid, we are aware of no legal basis for objecting to such action. In this connection, it should be noted that the Government has no enforceable right to an extension of the acceptance period, and it therefore does not relinquish any right or benefit in accepting an extension on only part of the bid. Moreover, to have acted otherwise in the instant case would have subjected the Government to the risk of losing the benefit of those bid prices at which award was made for the quantity of items finally purchased. We therefore find no basis in your letter of December 29 for questioning the agency's actions in awarding the contract in this case.

Very truly yours,

Paul G. Danblin

For the Comptroller General  
of the United States