



**DECISION**

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

9758

FILE: B-194461

DATE: April 9, 1979

MATTER OF: Tennessee Apparel Corporation DLG-00010

*[Protest of SBA Failure to Act on COC Application Within 15 Day Period]*

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will decide matter without requesting report from procuring agency.
2. Since regulations regarding processing of COC application do not require agency to award contract or SBA to act on COC application within 15 day period and extensions of time period may be granted at agency's discretion, protest of delay in award is denied.
3. Since agency has no right to bid extensions it is for each bidder to decide whether it wishes to extend its bid. Therefore there is no merit to contention that award delay forced bidders to hold bids open.

Tennessee Apparel Corporation (TAC) protests the award of a contract to any other bidder under solicitation No. DLA100-79-C-0200 issued by the Defense Personnel Support Center (DPSC). Bids were opened on January 22, 1979 and Statham Garment Company (Statham), a small business firm, was the low bidder. TAC was the second low bidder. AGC 100882

DLG-00011

*Certificate of Competency*

On February 14, 1979, the contracting officer determined that Statham was nonresponsible due to lack of capacity. Since Statham is a small business concern, the matter was referred to the Small Business Administration (SBA) for a certificate of competency (COC). All other bidders were requested to extend their bid prices until March 17, 1979. The contracting officer subsequently requested all bidders to further extend their prices until March 30, and, again until April 6.

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*improper award of contract*

The protester alleges that the SBA has delayed more than the 15 days permitted it to determine whether to issue a COC to Statham. Defense Acquisition Regulation (DAR) 1-705.4(c) (1976 ed.). TAC further contends that the DPSC's delay in making the award beyond the 15-day waiting period has prejudiced all bidders other than Statham because they have been forced to hold open their bid prices. TAC states that since it is the lowest responsive and responsible bidder, award to any other bidder would be improper.

This case falls within the ambit of our decisions which hold that where it is clear from the protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's submission without requesting a report from the procuring agency pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1978). Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91.

If a bid or proposal of a small business concern is to be rejected because the contracting officer has determined the concern to be nonresponsive as to capacity or credit, the matter shall be referred to the SBA. DAR 1-705.4(c). While DAR 1-705.4(c) and the applicable SBA regulation (13 C.F.R. 124.8-16 (1978)) emphasize the need for expeditious processing of a COC application, they do not require that the SBA act on the COC application or that the contracting officer make the award at the expiration of the 15 day period. We have held that the contracting agency may at its discretion grant an extension for processing a COC application. Greenbrier Industries, Inc., B-191380, April 24, 1978, 78-1 CPD 315.

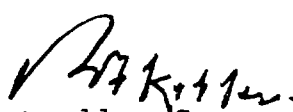
Where, as in the instant case, administrative difficulties delay award beyond previously established bidders' acceptance periods, the contracting officer may request an extension of the bid acceptance period. DAR 2-404.1(c) (1976 ed.). The Government has no right, however, to a bid extension. It is for each bidder to decide whether it wishes to continue to have its

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bid in being. ACCESS Corporation, B-189661, February 3, 1978, 78-1 CPD 100. Therefore we see no merit to TAC's contention that the delay in contract award "forced" the bidders to hold open their bid prices.

The protest is denied.

  
Deputy Comptroller General  
of the United States