



**G A O**

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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Myers Investigative and Security Services, Inc.

**File:** B-287949.2

**Date:** July 27, 2001

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Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.  
Scarlett D. Grose, Esq., General Services Administration, for the agency.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest is sustained where agency chooses not to defend against the protest and effectively concedes that the challenged evaluation and selection decision were not properly done by acknowledging that no adequate documentation of the agency's actions exists.

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## **DECISION**

Myers Investigative and Security Services, Inc. protests the award of a 60-day "bridge" contract by the General Services Administration (GSA) to Industrial Loss Prevention, Inc. for guard services for federal buildings in the Lumberton, North Carolina area.

We sustain the protest.

By letter dated May 30, 2001, GSA requested proposals for guard services at various locations in Lumberton, North Carolina, for a 30-day base period, with one 30-day option period.<sup>1</sup> The letter did not explicitly state the basis for award, but requested that offerors provide prices only. Specifically, the letter called for offerors to furnish "rates for productive hours, additional hours and supervisory hours, and a cost

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<sup>1</sup>GSA's solicitation here seeks guard services for an interim period during which GSA completes re-evaluation of offers for a state-wide contract for these services. That re-evaluation is the corrective action undertaken in response to an earlier protest filed by Myers, B-287648, challenging the award of the state-wide contract.

breakdown of how you obtained your rates.” On May 31, GSA made award to Industrial Loss Prevention for a 60-day period.

Myers contends that, while GSA solicited offers based on price alone, the award decision was based on a consideration of both past performance and price. Myers also asserts that GSA improperly evaluated the past performance of the awardee and of Myers, and improperly failed to give Myers an opportunity to respond to adverse past performance information that GSA considered in the evaluation.

In a letter dated June 20, GSA states that it “has decided not to take corrective action or submit a defense in the subject protest.” Specifically, GSA acknowledges that there were “many verbal exchanges” between the offerors and the agency that were not documented; in the absence of such documentation, GSA states, it is not in the government’s interest to expend further resources to defend the protest.

GSA states that corrective action—such as termination of the current contract and recompetition—is not feasible because of the short duration of the contract at issue and the nature of the services involved. Specifically, GSA states that the services are performed at federal buildings in the Lumberton area, that there have been numerous changes in contractor personnel, and that further disruption in service would pose a security risk.<sup>2</sup> GSA states that it instead will allow the current contractor to complete the 60-day term of the challenged contract, and will then issue a solicitation for a new interim contract, which will allow sufficient time for GSA to re-evaluate offers for the statewide guard contract. GSA has offered to reimburse Myers its costs of filing and pursuing the protest. Myers declined GSA’s offer, instead requesting that we issue a decision on its protest.

We interpret GSA’s decision not to defend against the protest, together with its statement that adequate documentation of the actual evaluation and selection does not exist, as, in effect, a concession that the evaluation and award decision were not done properly. In the absence of any evidence to show that the evaluation and award decision were properly done, and in view of GSA’s decision not to defend against the protest, we sustain the protest. See, e.g., JAFIT Enterprises, Inc., B-266326, B-266327, Feb. 5, 1996, 96-1 CPD ¶ 39 at 2 (protest sustained where agency essentially conceded that its sole-source award of “bridge” purchase orders was not authorized under any statute, but did not take corrective action). Given that the 60-day contract period has elapsed and performance has been completed, and that

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<sup>2</sup> These are the same factors the agency relied on in its June 8 decision to override the stay of performance of the challenged contract triggered by the protest. In its override decision, GSA concluded that urgent and compelling circumstances affecting the national security of the United States did not permit staying performance of the contract pending our decision on the protest. See 31 U.S.C. § 3553(d)(3)(C) (1994).

GSA has awarded a new interim contract as promised, we recommend that GSA reimburse Myers the costs it incurred in preparing its offer and in filing and pursuing the protest.<sup>3</sup>

The protest is sustained.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup>GSA also maintains that Myers should be limited to recovering protest costs it incurred before June 19, the date on which Myers declined GSA's settlement offer. We see no basis to impose such a limitation here. GSA asserts that it was unreasonable for Myers to pursue the protest given that the relief offered by GSA--protest costs and an opportunity to compete for future awards--was the only relief available under the circumstances. We do not agree with GSA's characterization of the facts. While the contract at issue is of relatively short duration, termination and recompetition were feasible at the time GSA made its settlement offer; the fact that GSA decided it would not be prudent to take such actions does not change the fact that they were an option at the time. In short, the agency's offered corrective action did not render the protest academic; had it done so, we would have dismissed this matter, and there would have been no protest against which to incur further costs. We note, however, that our conclusion that the protester's costs should not be limited to the time of the settlement offer could be different under different circumstances. If, for example, a protester incurred the costs of preparing extensive comments on the substantive issues raised in its protest even after the agency had conceded the merits of the protest, incurring those costs would not be reasonable, and we would not recommend their reimbursement. Here, in contrast, the protester's efforts after the settlement offer were apparently minimal, with the only further submission to our Office being a 1-page letter filed with our Office essentially requesting a decision on the merits.