

DECISION



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

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95285

FILE: B-180457

DATE: July 3, 1974

MATTER OF: Robert F. Simmons

- DIGEST:**
1. GAO is without authority to render binding decision relative to protest and claim concerning actions of Secretary of HUD in making loans and grants to state urban renewal project under 42 U.S.C. § 1450 et seq. (1970) since by law such transactions are final and conclusive on all Government officers; GAO's role is limited to performing audits pursuant to 31 U.S.C. § 851 (1970).
 2. Since even in Federal procurements contracting agency may in Government's best interests recognize third party as contractor's successor in interest or permit contractor name change, GAO does not agree with contention of unsuccessful bidder on Federally assisted local urban renewal project that to permit successful bidder to alter name and add general partner would be unfair to original bidders.

The Urban Renewal and Community Development Agency of the City of Louisville, Kentucky (the City) issued on June 27, 1970, a request to developers to submit proposals for the purchase and development of a tract of surplus Federally owned land in Louisville for low and moderate income housing. In order to secure Federal participation in this project, the City was required to prepare and submit to the United States Department of Housing and Urban Development (HUD) an Urban Renewal Plan which satisfied certain HUD criteria. Upon approval of the plan, the City would be provided certain loan and grant financial assistance, pursuant to HUD's Urban Renewal Program (42 U.S.C. § 1450 et seq. (1970)), to enable the City to implement its plan.

The proposal of the Vector Company, Incorporated, was selected by the City and subsequently the City and HUD executed a Loan and Capital Grant Contract pursuant to which the City was to receive the aforementioned financial assistance.

Following the receipt by the City of this loan and grant contract, Vector applied to the City for approval to enter into its contract and to take title under the name of Whittaker Community Development Corporation (Whittaker). It appears that at the time of the selection, Vector was a wholly owned subsidiary of Whittaker and that the change in name was requested because of litigation which had developed against Vector. The reported justification for the change was to "clear the cloud over the project" created by litigation unrelated to the project. The City determined that the Whittaker Corporation could acquire and develop the land in accordance with the City's Urban Renewal Plan, and approved the request. Following this action, Whittaker has requested to undertake this project with a qualified and experienced partner and has sought approval to add Bokar and Associates (Bokar) as a general partner for this project. While the City has given favorable consideration to this request, HUD has not yet rendered its final approval.

As a result of the above, Robert F. Simmons, one of the five original offerors on this project, has protested to this Office. Mr. Simmons objects to approval of Whittaker's request to add Bokar as a partner, on the grounds that Bokar would become a developer on this project without submitting an offer in compliance with the City's Instructions to Bidders. Accordingly, Mr. Simmons requests that this Office determine whether Bokar may be added as a general partner and that we review the propriety of permitting the developer to continue to function under the name of Whittaker. In addition, Mr. Simmons has requested reimbursement of bid preparation costs in the amount of \$35,000.

As stated, the program involved here is for the purpose of eliminating slums and blight in urban areas and is authorized under the Housing Act of 1949, ch. 338, Title I, 63 Stat. 413, as amended, 42 U.S.C. § 1450 et seq. (1970). While the act originally vested powers in the Administrator, Housing and Home Finance Agency, such powers were transferred to and vested in the Secretary, HUD, by the Act of September 9, 1965, Public Law No. 90-19, § 5, 79 Stat. 669. The Secretary's determinations relative to financial transactions including loans and grants under the program are made final and conclusive upon all officers of the Government. 42 U.S.C. § 1456(a)(2) (1970). With regard to these functions the Secretary may sue and be sued. 42 U.S.C. § 1456(c)(1) (1970).

The responsibility of this Office under the act is limited to performing an audit in accordance with the principles and procedures applicable to commercial transactions as provided by the Government Corporation Control Act, ch. 557, Title I, 59 Stat. 597, as amended, 31 U.S.C. § 846 et seq. (1970), which requires that a report of the audit findings will be presented to the Congress. 31 U.S.C. § 851 (1970). Consequently, we are not authorized to render a binding decision regarding the protest of the Secretary's actions and the claim for reimbursement of bid preparation costs. 37 Comp. Gen. 666, 668 (1958) and B-114860, November 15, 1973, 53 Comp. Gen. (1973).

Our consideration, generally, of the matters in dispute here has not caused us to question the propriety of the Secretary's actions. The record shows that HUD has approved the request to change the name of the project developer for the reason given by the City but has not yet approved the request to add a general partner on the project "since the housing subsidies needed to implement the contract are not presently available for this project." It has been contended that the effect of these actions is to defraud the other original proposers on the project. However, even in direct Federal procurements, although the transfer of a Government contract is prohibited by law (41 U.S.C. § 15 (1970)), the Government may, if it is in its best interests, recognize a third party as a successor in interest to a Government contractor or permit a change of name of a contractor. See Federal Procurement Regulations (FPR), Subpart 1-26.4, entitled "Novation and Change of Name Agreements." As stated in FPR 1-26.402(a), the purpose of the Act which prohibits the transfer of contracts is intended for the Government's protection, thus giving an agency discretion in acting to ensure that protection. Accordingly, we do not agree that the Secretary's determination that it would be in the Government's best interest to approve these changes can reasonably be construed as deceiving the original bidders, as contended.


Deputy Comptroller General
of the United States