



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20340

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E-173856

June 26, 1973

AIR MAIL

Service Distributors, Incorporated
567 Seventh Street
San Francisco, California 94103

Attention: Mr. F. A. Barsocchini
General Manager

Gentlemen:

This will acknowledge receipt of your letter dated June 5, 1973, with enclosures, protesting against the award of a contract to Web Service Company (Web) under Invitation for Bids (IFB) N66214-73-D-1693, issued by the Naval Regional Procurement Office, Naval Supply Center, Oakland, California.

It appears from the enclosures submitted with your letter that April 25, 1973, was established as the bid opening date by the instant IFB, which was a total small business set-aside. On May 23, 1973, after being advised of the award to Web, you protested to the procuring activity, alleging that Web did not qualify as a small business. The contracting officer responded to your protest by letter of May 29, 1973, in which he stated that his acceptance of Web's size status certification could not be disturbed in view of the requirement, contained in Armed Services Procurement Regulation (ASPR) 1-703(b)(1), that protests concerning small business status "must be received by the contracting officer prior to the close of business on the fifth working day * * * after bid opening date for formally advertised and small business restricted advertised procurements."

You received the contracting officer's letter the follow day, May 30, 1973, whereupon you reiterated your protest. However, the contracting officer's opinion remained unchanged, as he advised you by letter of June 1, 1973. Your subsequent protest to our Office was received on June 8, 1973.

Under ASPR 1-703, a contracting officer is required to accept at face value, for the particular procurement involved, a certification by the bidder that it is a small business concern unless a timely written protest is received from another bidder concerning the size status of the apparently successful bidder or the contracting officer questions the

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small business status of the bidder and submit the question to the Small Business Administration (SBA) for determination. It does not appear that the contracting officer submitted any question of Web's small business status to SBA for determination. In addition, since there was no timely protest prior to award, the contracting officer accepted Web's certification.

Your protest was dated May 23, 1973, 19 days after award. In this regard, ASPR 1-703(b)(1) provides in part as follows:

Any bidder, offeror, or any other interested party may, in connection with a contract involving a small business set aside or otherwise involving small business preferential consideration, question the small business status of any apparently successful bidder or offeror by sending a written protest to the contracting officer responsible for the particular procurement. The protest shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim that such bidder or offeror is not a small business. Such protest must be received by the contracting officer prior to the close of business on the fifth working day exclusive of Saturday, Sunday, and Federal Legal Holidays (hereinafter referred to as working day) after bid opening date for formally advertised and small business restricted advertised procurements.

Also, ASPR 1-703(b)(1)(c) directs the contracting officer to take the following action on protests received after award:

A protest received by a contracting officer after award of a contract shall be forwarded to the Small Business Administration district office serving the area in which the protested concern is located with a notation thereon that award has been made. The protestant shall be notified that award has been made and that his protest has been forwarded to SBA for its consideration in future actions.

It appears that the contracting officer acted in accordance with the regulations in forwarding your protest to the SBA for its consideration in future actions.

We have held that in the absence of a timely protest as required by ASPR, a contracting officer has authority to accept at face value a representation by a bidder that it is a small business concern and that an award under such circumstances will not be questioned by our Office. 46 Comp. Gen. 342 (1966).

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Accordingly, your protest against the award to Web Service Company is denied.

Sincerely yours,

Paul G. Deabling

Acting Comptroller General
of the United States