

DOCUMENT RESUME

08109 - [C3348436]

**[Protest Dismissed as Untimely Involving Business Size Status].
B-193269. November 27, 1978. 2 pp.**

**Decision re: Building Service & Maintenance Co., Inc.; by Milton
J. Socolar, General Counsel.**

**Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: Department of Energy; Microsurance, Inc.
Authority: 15 U.S.C. 637(b). -4 C.F.R. 20. B-191462(2) (1978).**

**A protest against a contract award was based on the
determination of price unreasonableness, the agency's failure to
negotiate with the protester, and an allegation that the awardee
did not qualify as a small business. The first two bases of
protest were untimely as protests were filed more than 10 days
after bases for protests were known. Small business size status
is a matter for Small Business Administration determination and
not subject to GAO review. (HTW)**

DECISION

In. Just PACB
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**
8436

FILE: B-193269

DATE: November 27, 1978

MATTER OF: Building Service & Maintenance Co., Inc.

DIGEST:

1. Protests filed more than 10 working days after bases for protests are known are untimely under section 20.2(b)(2) of Bid Protest Procedures.
2. Protest concerning small business size status of firm is not subject to review by GAO.

Building Service & Maintenance Co., Inc. (Building Service), protests the award of contract No. EW-78-C-05-6044 to Microsurance, Inc., by the United States Department of Energy. Building Service's protest is based upon (1) the contracting officer's determination that its bid price was unreasonable; (2) Energy's failure to negotiate with Building Service under solicitation No. EW-78-B-05-0026; and (3) the allegation that Microsurance does not qualify as a small business as required by the solicitation.

Bid opening was on September 7, 1978, when two bids were received--one from Building Service and the other from Microsurance. Building Service was notified by letter dated September 15, 1978, that its bid had been rejected as unreasonable and that Microsurance's bid had been rejected as nonresponsive. The letter further stated that the procurement was open for negotiations and new proposals could be submitted by the close of business on September 19, 1978, or the offerors could stand by their original proposals. Building Service states that it offered to negotiate the contract as provided in the letter, but the contracting officer did not do so. On October 23, 1978, Building Service filed its protest with our Office.

Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978), provides in pertinent part:

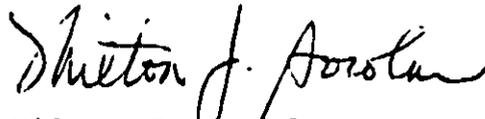
"* * * bid protests shall be filed [received] not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

Since Building Service filed its protest against Energy's determination of unreasonableness with our Office more than 10 days after the basis of the protest was known (receipt of the letter dated September 15), the first basis of the protest is untimely.

With regard to Building Service's second basis of protest--Energy's failure to negotiate with it--Building Service received notification of the award of the contract to Microsurance on October 5, 1978. The second basis of protest filed more than 10 working days after notification of the award is also untimely under section 20.2(b)(2) of the Bid Protest Procedures.

The third basis of protest concerns Microsurance's qualifications as a small business concern. Pursuant to 15 U.S.C. § 637(b)(6) (1976), the conclusive authority to determine the small business size status of a business concern lies with the Small Business Administration (SBA) and is not subject to review by this Office. Mann's Construction Co., B-191462(2), March 29, 1978, 78-1 CPD 245.

In view of the above, the protest is dismissed.



Milton J. Socolar
General Counsel