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**DECISION**



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

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FILE: B-193765

DATE: March 23, 1979

MATTER OF: Triple "A" South

DIGEST:

CNG 01448

[Untimely] Protest alleging specification deficiencies which is filed after bid opening is untimely and not for consideration on the merits.

Triple "A" South (Triple "A"), a large business firm, protests the setting aside for exclusive small business participation of invitation for bids (IFB) No. N62791-79-B-0028, issued by the United States Navy (Navy), Supervisor of Shipbuilding, San Diego, California.

Triple "A" asserts that the Navy set-aside was improper because (1) an excessive number of procurements (alleged to be 75 percent) for boat and ship repair services have been set aside for small business concerns for the period August 1, 1978, through December 1, 1978; (2) large businesses have idle capacity and are in a position to offer very competitive prices; and (3) as a result of such market conditions, the Government will end up paying an unreasonable price under the set-aside.

The protest is untimely. All the allegations relate to deficiencies in the IFB. Section 20.2(b) (1) of our Bid Protest Procedures, 4 C.F.R. § 20.2 (b)(1) (1978), provides that:

"Protest based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

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The protester states that bid opening occurred on December 12, 1978. The protester's letter to this Office, however, was received on December 18, 1978. Therefore, the protest is untimely filed and not for consideration on the merits. See Complete Building Maintenance Co., Inc., B-190996, January 19, 1978, 78-1 CPD 52.

We point out, however, that a contracting agency's determination that under a small business set-aside adequate competition may reasonably be anticipated so that awards will be made at reasonable prices is basically a business judgment requiring the exercise of broad discretion by the contracting officer. Generally, the exercise of that discretion is not subject to question in the absence of fraud or bad faith. See Development Associates, Inc., et al., B-183773, August 18, 1975, 75-2 CPD 112; Kinnet Dairies, Inc., B-187501, March 24, 1977, 77-1 CPD 209.

The protest is dismissed.



Milton J. Socolar  
General Counsel