

11399 *Proc II Roberts***DECISION**

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

FILE:

B-195405.3

DATE: September 13, 1979

MATTER OF: Astro Pak/Sub Sea Surveyors Inc.

*[Protest Alleging Procurement Errors]*  
DIGEST:

1. Protest allegations concerning deficiencies apparent in solicitation filed after closing date for receipt of initial proposals are untimely and not for GAO consideration under Bid Protest Procedures.
2. Protest allegations concerning small business size status and appeal of small business size standard determination are not for GAO consideration since by law they are matters for decision by Small Business Administration.
3. Protester's request for debriefing as unsuccessful offeror should be directed to procuring agency.

*add on SBIA*

Astro Pak/Sub Sea Surveyors Inc. (Astro), a joint venture, protests the award of a contract for water-borne ship's hull cleaning services to Seaward Marine Services Inc. (Seaward) under solicitation No. N00024-79-R-4321(Q) issued by the Department of the Navy, Naval Sea Systems Command.

The protester alleges several procurement errors, including improper evaluation criteria, and incorrect labor categories in the solicitation. Also, Astro contends that its competitive position was prejudiced because its price for the same requirement was improperly revealed in a prior canceled procurement and requests that other prices received under the previously canceled procurement also be revealed so that all may compete on an equal basis.

*add Contract award protest*

These objections obviously concern deficiencies in the solicitation of which Astro was aware prior to the July 10, 1979, closing date for receipt of proposals.

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Although the alleged erroneous price disclosure occurred in a prior procurement, the protester claims it was prejudiced when the instant solicitation was issued without any substantial change in the requirement. Astro first raised these issues in its protest received in our Office on August 16, 1979. We believe they are untimely filed under our Bid Protest Procedures which require that protests based upon alleged improprieties apparent prior to the closing date for receipt of initial proposals must be filed prior to that time, which in this case was July 10, 1979. 4 C.F.R. § 20.2(b)(1) (1979). Therefore, we will not consider the merits of these issues.

Astro also contends that an erroneous size standard was included in the solicitation and that Seaward is a large business and thus not qualified to receive award under this procurement which was set aside exclusively for small business concerns. Under 15 U.S.C. § 637(b) (1976), the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes and the applicable size standards. See Cardan Company, B-193839, January 31, 1979, 79-1 CPD 76 and Dynamic International, Inc., B-185337, January 5, 1976, 76-1 CPD 11. Thus, issues arising out of a dispute over the applicable size standard and the small business size status of Seaward are, by statute, not for our consideration. Although Astro asserts that no award should be made during its challenge of the small business size status of Seaward, we are informed that the Navy already had awarded to Seaward on August 9, 1979, prior to Astro's protest.

Finally, Astro's request for a debriefing as an unsuccessful offeror, in accordance with Defense Acquisition Regulation § 3-508.4, should be directed to the Navy.

The protest is dismissed.

*for* *Harry R. Van Cleave*  
Milton J. Socolar  
General Counsel