

13529 PLCC

DECISION



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

[Protest of HEW Contract Award]

FILE: B-198244

DATE: April 23, 1980

MATTER OF: Horne Health Care, Inc.

DLG0210

DIGEST:

Protest allegation raised after bid opening that procurement should have been set aside for small business concerns is untimely under GAO Bid Protest Procedures and not for consideration.

Horne Health Care, Inc. (Horne) protests the award of a contract to National Health Services (National), by the Department of Health, Education and Welfare, Occupational Health Services (HEW) under solicitation No. 80-8.

CAG 10476

AGC 00022

Horne contends that it is current administrative policy to award this type of contract to small businesses, and that the award to National, a large business, violates this policy and is discriminatory.

The apparent basis for protest is HEW's failure to set aside this solicitation for small business concerns. Our Bid Protest Procedures provide that:

"\* \* \* protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening \* \* \* shall be filed prior to bid opening \* \* \*."  
4 C.F.R. §20.2(b)(1) (1980).

Since the protest involved an alleged impropriety in the solicitation which was apparent prior to bid opening, it should have been filed prior to that date. The protest, however, was not received in our Office until after bid opening; consequently, it is untimely filed and not for consideration. General Fire Extinguisher, B-198079, March 28, 1980, 80-1 CPD \_\_\_.

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We point out, however, that while it is the policy of the Government to award a fair proportion of purchases of supplies and services to small business concerns, there is nothing in the Small Business Act or applicable regulations which mandates that this particular procurement be set aside for small business. Rather the decision whether a procurement is to be set aside generally is within the discretion of the contracting agency. Instrument Control Service, B-194503, April 30, 1979, 79-1 CPD 299.

The protest is dismissed.

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