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DECISION



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

19803

FILE: B-204887

DATE: October 20, 1981

MATTER OF: Coonrod and Walz Construction Co., Inc.

DIGEST:

1. Protest that procurement should not have been set aside for small business firms is untimely since protest concerns a solicitation impropriety apparent prior to bid opening but was not filed until after bid opening.
2. Contention--that competitive bids from a sufficient number of small businesses were not received--is without merit where six bids from small businesses were received and award was made at a price near the lower range of the Government estimate. Further, GAO will not investigate each bidder, at the protester's request, to ascertain its size status.

Coonrod and Walz Construction Co., Inc. (C&W), protests against any award under an invitation for bids for project No. 452-031 issued by the Veterans Administration (VA) for construction alterations at the Medical Center in Wichita, Kansas. C&W contends that the VA should not have set aside project No. 452-031 for small business firms and that competitive bid prices were not received from a sufficient number of small businesses. We find that C&W's protest is without merit.

C&W contends that large businesses should not have been excluded from competing for this award because (1) the job is complex, (2) small businesses are no more qualified than C&W, (3) the Small Business Act did not contemplate projects in this range (estimated at \$5 to \$6 million) being set aside, (4) C&W, whose president is a veteran, should be allowed to compete, (5) all such projects in the Wichita area are set aside, which is unfair to large businesses, and (6) if large businesses could compete, the VA could save money.

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A representative of the VA has informally advised our Office that bids were opened on August 27, 1981. C&W's protest was filed (that is, received) in our Office on September 23, 1981.

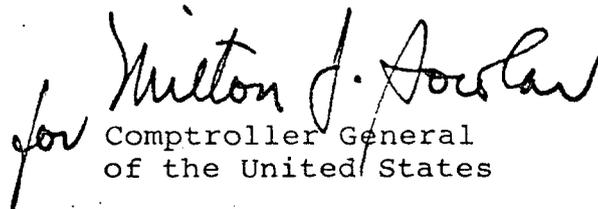
C&W's contention that the procurement should not have been set aside relates to an apparent solicitation impropriety which was not protested until after bid opening. Under our Bid Protest Procedures, protests of alleged solicitation improprieties that are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). Consequently, we will not consider this aspect of the protest. Gulf Coast Elevator Company, Inc., B-201611, January 19, 1981, 81-1 CPD 33.

C&W also contends that competitive bids were not received from a sufficient number of small businesses. In this regard, C&W requests that we investigate each bidder to ascertain whether it is a legitimate small business.

VA advises that six bids from small businesses were received and that award was made to Blackburn Builders, Inc., based on its low bid of \$5,024,000.

In our view, six bids are a sufficient number to constitute adequate competition and, since the award price is on the lower range of the Government estimate, we have no basis to conclude that the price is unreasonable. Further, we will not investigate each bidder at C&W's request to ascertain its size status. If C&W was aware of some evidence to challenge the awardee's size status, that information should have been presented to the Small Business Administration, which is empowered to conclusively determine matters of small business size status for Federal procurement purposes. Macy M. Sharf Company, Inc., B-202955, May 19, 1981, 81-1 CPD 387.

Accordingly, C&W's protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States