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DECISION



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

FILE: B-208257

DATE: December 7, 1982

MATTER OF: Liquid Controls Corp.

DIGEST:

Oral notice of award given to protester 11 days after award was made complied with prompt notice required by DAR § 2-408.1. In any event, failure to provide prompt notice of award is merely procedural irregularity which does not affect validity of award where alleged inability to compete for sub-contract placed by awardee due to late notice is not shown.

Liquid Controls Corporation (Liquid) protests the award of a contract by Defense Logistics Agency (DLA), Defense Construction Supply Center (DCSC), Columbus, Ohio, to Advanced Industries, Inc. (Advanced), for flow meter kits under invitation for bids (IFB) DLA700-82-B-0485, a total small business and labor surplus area (LSA)/small business set-aside with price differential.

Liquid, the sixth low bidder, contends that the award was improper because Advanced was not the low bidder; the apparent second low bid submitted by Neptune Measurement Company (Neptune), a large business, was nonresponsive; and Advance selected Neptune, a large business, as a subcontractor. Finally, Liquid contends that DCSC provided untimely notice that it was an unsuccessful bidder, which precluded the protester from competing for the subcontract awarded by Advance to Neptune.

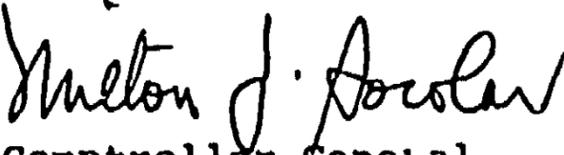
DLA's protest report specifically rebutted Liquid's contentions in concluding that the award to Advanced was proper. Liquid's response discussed only its final contention concerning the late notice, which was described as the "primary issue." Therefore, we conclude that Liquid has acceded to the DLA rebuttal and we will resolve only the final contention.

Liquid advises that, although the contract was awarded to Advanced on June 28, 1982, Liquid received no formal notice until July 15. The protester was orally advised of award on July 9 and contacted Advanced, which advised that the Neptune subcontract had been placed. Also, on the date of award, the protester was asked to extend its bid until July 9. Liquid finally contends that the aforementioned notice was dispatched well after award because two other unsuccessful bidders received notices 2-3 weeks after contract award.

According to the records of DCSC, the notice to Liquid was dispatched on June 28, the date that the letter notice of award was mailed to Advanced. The contracting officer attributed the delay in receipt to the possibility of the notice having been lost in the mail.

Defense Acquisition Regulation (DAR) § 2-408 (1976 ed.) requires that notice be given to unsuccessful bidders promptly and that the notice can be either oral or in writing. Since the award was made on June 28, it would appear that the oral notice given Liquid on July 9 was prompt and, therefore, proper, even if the agency's records are incorrect as to the mailing date of the formal notice. In any event, we fail to see how the protester was prejudiced since this was an advertised solicitation and bid opening was over 5 months before award. Consequently, the protester had ample opportunity to identify and contact lower bidders and potential awardees for subcontracting opportunities. Therefore, to the extent the notice was not "prompt," it is merely a procedural irregularity which does not affect the validity of the award. M & H Concrete Structures, Inc., B-206276, April 15, 1982, 82-1 CPD 348.

Protest denied.

for 
Comptroller General
of the United States