

DECISION



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

FILE: B-208785

DATE: January 18, 1983

MATTER OF: ARVCO Containers

DIGEST:

1. Letter to contracting agency which conveys concern that the agency awarded a contract under a small business set-aside to a company supplied by a large business firm which is impermissible under solicitation suffices as a protest even though the word "protest" was not used.
2. Where firm files timely protest initially with agency and, after pursuing protest with agency for approximately 2 months, files protest with GAO without having received a denial of its protest by agency, protest filed with GAO is timely.
3. Protest that contractor has subcontracted a substantial portion of work under contract to large business in violation of solicitation requirement that the end item be manufactured or produced by a small business concern is denied where record shows that product is being manufactured by small business subcontractor.

ARVCO Containers (ARVCO) protests the award of a contract to Coast Line Distributors (CLD) under solicitation No. BEP 82-113(TA), a small business set-aside, issued by the Bureau of Engraving and Printing, Department of the Treasury (Treasury). The contract is for the furnishing of corrugated fiberboard boxes. ARVCO contends that CLD has subcontracted a substantial portion of the contract to Simkins Industries, a large business, in violation of the terms of the solicitation.

We deny the protest.

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Treasury contends that this protest is untimely and should be dismissed. Treasury refers to a June 11, 1982, letter from ARVCO to the contracting officer stating that it was advised on that day that the award had been made to CLD, that Simkins would manufacture the boxes, and that Simkins was a large business. ARVCO asked that, "due to the fact that this solicitation is a small business set-aside, could you please advise ARVCO what the decision will be in regards to the award?" Treasury argues that this letter was not a protest to the agency, and since the protest was not filed with GAO until August 23, 1982, more than 10 days after the June 11, 1982, notice of the award, ARVCO's protest is untimely.

We disagree. The letter ARVCO submitted to the Treasury which was received on June 15, 1982, constituted a timely protest to the agency. ARVCO was clearly questioning the agency's decision to award to CLD because CLD's supplier was allegedly a large business concern. We have stated that a request by a bidder for review of procurement procedures need not contain the exact words of protest to be characterized as a formal protest, so long as the request may be reasonably understood to lodge specific exceptions to the questioned procedures. See Applied Devices Corporation, B-203241, September 9, 1981, 81-2 CPD 207; Abreen Corporation, B-197261, April 18, 1980, 80-1 CPD 274.

The record further shows that, after the agency protest was filed, Treasury did not respond until after August 26, 1982, when ARVCO filed its protest with GAO. Under these circumstances, the protest to GAO was timely filed subsequent to an initial timely protest to the agency. 4 C.F.R. § 21.2(a) (1982).

With regard to the merits, we note that the CLD bid certified that the bidder was a small business and that the end item would be manufactured or produced by a small business. Treasury advises that it investigated ARVCO's allegation that the work had been subcontracted to a large business. Treasury determined that CLD is subcontracting

the furnishing of the boxes to Packaging Services of Maryland (PSM), a small business concern, not to Simkins Industries. The agency report includes a letter dated prior to any contract deliveries from CLD to Treasury indicating that CLD intends to subcontract the work to PSM. Since, in its comments to the agency report, ARVCO again contended that CLD was subcontracting to a large business, we requested the contracting officer to confirm that CLD was subcontracting to PSM, and the contracting officer has so confirmed.

Under these circumstances, we deny the protest.

for *Milton J. Focolan*
Comptroller General
of the United States