

DECISION



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

FILE: B-214346; B-214346.2 **DATE:** March 12, 1984

MATTER OF: Mantz Systems Inc.; All-Star Maintenance, Inc.

DIGEST:

1. A protest against a solicitation's bonding requirement is untimely filed under GAO Bid Protest Procedures where the protest is transmitted by Western Union and GAO receives the transmission after bid opening.
2. GAO will not consider a protest alleging that a bidder is not a small business concern since by law the Small Business Administration has the authority to determine conclusively a concern's small business size status.

Mantz Systems Inc. and All-Star Maintenance, Inc. protest various matters concerning invitation for bids No. F31610-84-B-0006, a small business set-aside issued by the Department of the Air Force. The solicitation sought housing maintenance services. We dismiss both protests.

Mantz complains that the solicitation's bonding requirement unfairly restricts competition and adds unneeded costs to the procurement. The firm requests that the bonding requirement be deleted from the solicitation.

Mantz's protest is untimely. Our Bid Protest Procedures require that a protest based on improprieties in a solicitation that were apparent before bid opening be filed (received) before bid opening. 4 C.F.R. § 21.2 (b)(1) (1983). The Air Force informally advises us that bid opening took place at 3:00 p.m. on February 10, 1984. Mantz's protest, which was transmitted by Western Union telex message, was received in this Office at 10:46 p.m. on February 10, as evidenced by the automatic time imprint on the message. Since the protest was filed after bid opening, it will not be considered. See Keuffel & Esser Co., B-206229, February 9, 1982, 82-1 CPD 123.

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All-Star alleges that Desco, Inc., the apparent low bidder, is affiliated with the incumbent contractor and is thereby a large business.

All-Star's protest also will not be considered. Under 15 U.S.C. § 637(b)(1982), the Small Business Administration (SBA) is empowered to conclusively determine the small business size status of a firm and thus questions concerning size status must be addressed to that agency, not GAO. See Harris Systems of Texas, Inc.; Anti-Pest Co., Inc., B-208670, B-208809, April 13, 1983, 83-1 CPD 392. Procedurally, a size status protest must be filed within 5 working days of bid opening with the contracting officer, who then must forward the protest to the SBA for resolution. Defense Acquisition Regulation § 1-703(b)(1) (1976 ed.).

The protests are dismissed.

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Acting General Counsel