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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Perdomo & Sons, Inc.

File: B-234614

Date: April 3, 1989

DIGEST

Protest alleging solicitation deficiencies (failure to issue solicitation as a small business set-aside) which is not filed before the bid opening date is untimely.

DECISION

Perdomo & Sons, Inc., protests that the Veterans Administration (VA) acted improperly by failing to set aside for exclusive small business participation solicitation No. 619-72-89, issued for refuse service at the VA Medical Center in West Los Angeles, California.

Under the initial solicitation, No. 691-53-89, issued by the VA exclusively as a small business set-aside for refuse service at the VA Medical Center, Perdomo submitted the only timely bid at the initial bid opening on November 29, 1988. The VA rejected Perdomo's bid as excessively priced and canceled the solicitation. The VA subsequently withdrew the procurement from the small business set-aside program. On January 4, 1989, the VA issued solicitation No. 691-72-89 on an unrestricted basis for refuse service with bid opening scheduled for February 23. Perdomo hand-delivered its bid to the VA on February 23. By letter dated February 23, and received by our Office on February 24, Perdomo filed a protest, essentially arguing that the VA acted improperly by failing to set aside this solicitation for exclusive small business participation.^{1/}

Perdomo's protest concerns alleged deficiencies which were apparent from the solicitation. See Professional Aviation Maintenance & Management Services, Inc., B-232078, Oct. 13, 1988, 88-2 CPD ¶ 350; Geo Marine Resources, B-233776.3, Jan. 24, 1989, 89-1 CPD ¶ 72. Our Bid Protest Regulations

^{1/} The record shows that no agency-level protest was filed by Perdomo prior to bid opening.

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require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1988). Here, the alleged deficiencies were apparent prior to bid opening, and Perdomo only filed its protest with our Office on February 24, the day after bid opening. Therefore, its protest is untimely and not for consideration on the merits. Id.

Accordingly, the protest is dismissed.

Andrew T. Prozy

for

Ronald Berger
Associate General Counsel