



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: B & S Transport, Inc.
File: B-240906; B-240909
Date: August 24, 1990

Ronnie Harris, for the protester.

DIGEST

1. Evaluation of bids based on application of an evaluation preference not provided for by solicitation would be improper.
2. Protest that solicitation should have included an evaluation preference for small disadvantaged business concerns is untimely since it alleges a solicitation impropriety apparent before bid opening but was not filed before that time.

DECISION

B & S Transport, Inc., a small disadvantaged business (SDB) concern, protests the Department of the Army's refusal to apply an evaluation preference for SDBs under invitation for bids (IFB) Nos. DAAE07-90-B-S177 and DAAE07-90-B-S185.

The solicitations did not contain any provision for applying an SDB preference. The longstanding rule is that the evaluation of bids must be in accordance with the evaluation provisions of the IFB; in the absence of solicitation language providing for application of a preference, evaluation on the basis of a preference would be improper. Mycon Construction Co., Inc., B-231544, June 14, 1988, 88-1 CPD ¶ 572.

To the extent B & S contends that the solicitation should have contained an SDB evaluation preference clause, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), provide that a protest based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed either with the agency or this Office prior to opening. See B & S Transport, Inc., B-240906; B-240909, June 1, 1990, 90-1 CPD ¶ 522. Here, the absence of the SDB evaluation preference clause in the

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solicitation should have been apparent to all bidders.
B & S therefore should have filed its protests prior to the
August 2 and August 22 bid openings.

The protests are dismissed.


Ronald Berger
Associate General Counsel