

DECISION



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

66293

FILE: B-185363

DATE: December 10, 1975

MATTER OF: Randall Manufacturing Co., Inc.

97603

DIGEST:

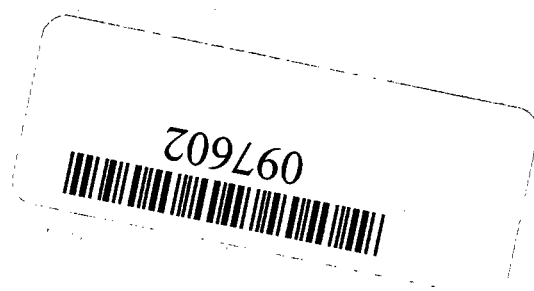
Protest alleging improper use of negotiation for procurement in lieu of formal advertising first filed after award has been made under the procurement is untimely and not for consideration on merits.

By letter filed on November 18, 1975, Randall Manufacturing Co., Inc. (Randall), protests the "bidding procedures" and the award made under request for proposals F09603-76-R-3155, issued by the Department of the Air Force, Warner Robins Air Logistics Center (AFLC). Randall protests the use of negotiations for this procurement in lieu of formal advertising.

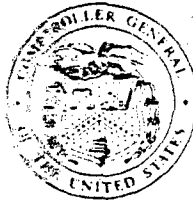
Prior to filing its protest with this Office, Randall had filed a similar protest with the contracting officer on October 30, 1975. However, the closing date for receipt of initial proposals had been August 20, 1975, and the deadline for submission of best and final offers had been September 22, 1975. Section 2.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that protests based upon alleged improprieties in a negotiated solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. Since the alleged defect was apparent to the protester prior to the closing date for receipt of initial proposals and Randall did not protest the alleged impropriety until after the award was made, its protest is untimely. Computer Machining Technology, B-181233, March 6, 1975, 75-1 CPD 134.

Therefore, the merits of this protest will not be considered.

for *Hilton Foster*
Paul G. Dembling
General Counsel



DECISION



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FILE: B-185406

60294
DATE: December 10, 1975

MATTER OF: Welmetco, Ltd.

DIGEST:

97602
Protest which questions small business status of another bidder is matter for consideration by Small Business Administration under 15 U.S.C. § 637(b)(6) (1970), and not GAO.

Welmetco, Ltd. (Welmetco), has protested the award of contracts to Eastern Spares Products, Inc. (Eastern), under invitations for bids (IFB) Nos. DSA100-76-B-0394 and DSA100-76-B-0326 issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. Both IFB's were small business set-asides.

Welmetco contends the awards to Eastern were improper because Eastern is not a small business under the applicable size standard. Welmetco protested the size status of Eastern to the contracting officer who forwarded the protest to the Small Business Administration Regional Office (SBA), Boston, Massachusetts. The SBA found Eastern to be a small business and Welmetco has appealed this decision to the SBA Size Appeals Board.

Pursuant to 15 U.S.C. § 637(b)(6) (1970) the SBA is empowered to determine a business concern's size status for procurement purposes. Offices of the Government having procurement powers must accept as conclusive any determination reached by the SBA as to which concerns are to be designated as small business.

As it is the duty of SBA, rather than GAO, to determine the size status of a concern, the protest is not for consideration by our Office and we are closing our file on the matter without further action.

for *Milton Fowler*
Paul G. Dembling
General Counsel