

DECISION



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

60807

FILE: B-185333

DATE: April 27, 1976

99015

MATTER OF: Associated Builders and Contractors, Inc.

DIGEST:

1. Decision to utilize small purchase procedures rather than formal advertising for contracts of less than \$10,000 is not reviewable and protest on this basis is dismissed.
2. When small purchase procedures are used, there is no requirement for pre-award and post-award notices to offerors, because ASPR Section III, Part 5 does not apply to small purchases.
3. Although contract awarded under small purchase procedures was for proposed delivery schedule differing from that contained in solicitation, it appears agency did not consider whether proposed delivery was acceptable. GAO advises that acceptability of delivery schedule should have been resolved before award.

Associated Builders and Contractors, Inc. (Associated Builders) has protested the award of a contract under solicitation No. DAKF31-76-Q-0104 issued by the Procurement Division, Fort Devens, Massachusetts. The protester challenges as "arbitrary" Fort Devens' use of negotiation procedures for small purchases rather than formal advertising as the means for procuring the replacement of an oil fired, hot water boiler at the U.S. Army Reserve Center, East Windsor, Connecticut.

The Army contends that this protest is untimely filed, because it was not received in this Office until the day after the closing date for receipt of quotations. Associated Builders argues that, even though the protest may be untimely, the issue raised is "significant to procurement practices" and should be considered under § 20.2(c) of our Bid Protest Procedures (40 Fed. Reg. 17979-80, April 24, 1975). However, we have concluded that the protest must be dismissed since the protester has presented no basis upon which we could object to the procedures utilized. We, therefore, need not decide the question of timeliness.

The solicitation cited as authority for its issuance 10 U.S.C. 2304(a)(3) (1970, Supp. V), which authorizes procurements of \$10,000 or less, so called "small purchases," by negotiation rather than by formal advertising. The Army notes that the Government estimate for the project was \$2,745 and the lowest quotation received was \$1,965.00.

Armed Services Procurement Regulation (ASPR) § 3-203.2, applies the authorizing language of 10 U.S.C. 2304(a)(3) (1970) as a mandate, requiring the use of simplified procedures in ASPR 3-600 et seq. for small purchases. Accordingly, decisions not to use formal advertising for purchases which come within the ambit of 10 U.S.C. 2304(a)(3) are not reviewed by this Office. In B-154813, August 27, 1964, a protester challenged the propriety of negotiating a purchase in the amount of \$1,570.68, and we stated that:

"The objective of the simplified purchase methods prescribed [in ASPR] is to reduce the administrative costs in accomplishing small purchases and to eliminate costly and time-consuming paper processes. Such procedure requires reasonable solicitation of quotations to be secured from qualified sources in order to assure that the procurement is made to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase.

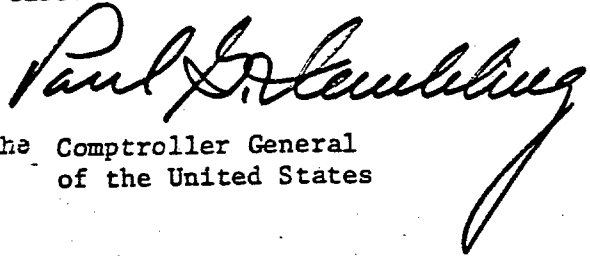
"In view of the foregoing regulations which have the force and effect of law, and since the procurement here involved comes within the 'small purchases' procedures, there is no basis for us to object to the administrative procedures being employed for this procurement."

Additionally, Associated Builders contends that the Army has failed to comply with the provisions in ASPR 3-508, Information to Offerors, requiring both pre-award and post-award notices to offerors. However, ASPR Section III Part 5 does not, by its terms (ASPR § 3-500), apply to procurements effected under Section III Part 6.

Finally, Associated Builders has pointed out that the solicitation requested quotations on the basis of a 20-day completion schedule, but that the firm awarded the contract apparently quoted on the basis of a 45-60 day completion schedule. The protester contends that the contractor's quotation was nonresponsive to the Government's specified requirements.

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This matter was not raised by the protester until after the contract was substantially completed. So far as the record shows, the Army did not consider whether the contractor's proposed delivery was responsive to the Army's needs. We believe that the Government's interests required that the acceptability of the revised delivery schedule should have been considered by the Army prior to award. Otherwise, however, we find no reason to object to the procedures followed in this case.



For the Comptroller General
of the United States