

# DECISION



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

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FILE: B-185294

DATE: January 5, 1976

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MATTER OF: Solon Automated Services, Inc.

## DIGEST:

1. Protest questioning propriety of total small business set-aside is untimely and not for consideration where protest was filed with GAO 11 days after protester received formal notification of initial adverse agency action.
2. Allegation that several bidders were not small business concerns is not for consideration by GAO since conclusive authority over such questions is vested by statute in SBA.

Solon Automated Services (Solon), a large business, protests the total small business set-aside of invitation for bids (IFB) No. DADF40-76-B-0045 for the rental, installation and maintenance of washing machines and dryers at Fort Bragg, North Carolina.

Solon contends that the procurement should not have been set aside for exclusive small business participation since there was no basis for a reasonable expectation that offers would be obtained from a sufficient number of responsible small business concerns so that awards would be made at reasonable prices. ASPR § 1-706.5 (1975 ed.). Solon contends that the Government could save \$38,000 if Solon were permitted to bid. The protester also maintains that the procurement resulted in inadequate small business competition in that three of the seven bidders do not qualify as small businesses.

The record reveals that on October 11, 1975, almost three weeks before bid opening, Solon initially protested the total set-aside action to the contracting officer on the basis that adequate small business competition and reasonable prices would not be available in the Fort Bragg vicinity. By letter dated October 16, the contracting officer denied Solon's protest, informing it that based on the procurement mailing list and the anticipated response,

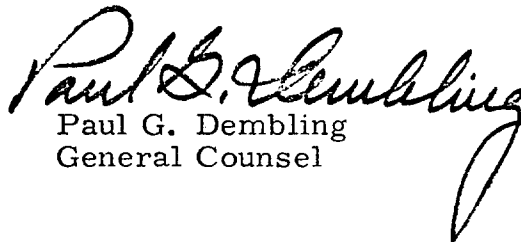
the IFB was open to small business participation throughout the United States as a result of which adequate competition was expected to be achieved. On October 22 and again on October 30, 1975, Solon wrote the contracting officer, objecting to the total small business set-aside. On October 31 bids from six small businesses and one large business other than Solon were opened and on November 4, 1975 Solon protested to this Office. We received Solon's protest on November 7, 1975.

Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979, April 24, 1975, provides in pertinent part that:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered \* \* \*."

The contracting officer initially denied Solon's protest on October 16, 1975. Even if Solon did not receive that notice until October 22, the date on which Solon again wrote the contracting officer objecting to his decision of October 16, the protest was not filed here until November 7, or eleven working days after the protester received formal notification of initial adverse agency action. Therefore, the protest is untimely and not for consideration on its merits.

Regarding the protester's contention that three bidders do not qualify as small businesses, our Office will not review questions of a bidder's small business size status since under 15 U.S.C. § 637 (b) (6) (1970 ed.) the SBA has been granted conclusive authority to determine matters of small business size for procurement purposes. Suburban Industrial Maintenance Co., B-181980, August 30, 1974, 74-2 CPD 135.

  
Paul G. Dembling  
General Counsel