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PL-1  
Mr. Carter

## DECISION



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

# [Protest of Army Solicitation Cancellation]

FILE: B-195735, B-195735.2 DATE: April 8, 1980

MATTER OF:

DLG04316

Apex International Management Services, Inc.; Alpha Services, Inc.; Virginia Linen Service, Inc.

DLG04347

DIGEST:

DLG04348

1. Challenge to small business set aside is dismissed as untimely because alleged impropriety apparent on face of solicitation was not protested prior to bid opening.
2. Protest against decision to perform services in-house rather than by contract is dismissed because protester, determined by Small Business Administration to be large business, is not eligible for award under small business set aside and is therefore not interested party under GAO Bid Protest Procedures.
3. Protest is dismissed as untimely where bases for protest were or should have been known to protester more than 10 working days prior to date protest is filed.

Apex International Management Services, Inc. (Apex), Alpha Services, Inc. (Alpha), and Virginia Linen Service, Inc. (VLS), have protested a decision by the Army under Office of Management and Budget Circular A-76 (A-76) to cancel a solicitation for laundry services for Fort Lee, Virginia, and to continue to provide these services with Government employees. All three of these companies were unsuccessful bidders.

DLG0158

The protests will not be considered on the merits.

The Army's decision not to contract out for these services was the result of a comparison of the costs of three alternatives: (1) continue to provide the laundry services in-house; (2) contract for operation of the Government's facility (Government-owned, contractor-operated (GOCO)); or (3) contract for the services from a contractor-owned and -operated facility (COCO).

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Costs of the first option were estimated. The costs of the other two options were ascertained by examining bidders' responses to a solicitation requesting bids on either a GOCO or COCO basis; the solicitation was a total small business set aside. The solicitation advised prospective offerors that their bids would be evaluated against the cost of continued in-house provision of laundry services. Essentially, the Army determined that in-house performance was the cheapest alternative and canceled the solicitation.

All three of these protesters contest the Army's cost evaluation. VLS objects to the solicitation being set aside for small business. Apex has challenged Alpha's small business status.

The objection raised by VLS to the small business set aside of this solicitation is untimely. The set aside was clearly stated in the solicitation. Our Bid Protest Procedures, 4 C.F.R. part 20 (1980), require that protests against alleged improprieties apparent in a solicitation prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 20.2(b)(1). Bids were opened on August 6, 1979. VLS first raised this question in its comments dated November 7 to our Office on the protests by Alpha and Apex. Consequently, this matter is untimely and will not be considered.

We have now been advised that the Small Business Administration has determined that Alpha is other than a small business. As a consequence, Alpha could not be considered for award of this contract because the procurement is a small business set aside.

Our Bid Protest Procedures, supra, require that a party be "interested" in order for its protest to be considered. Since Alpha, as a large business, was ineligible for award of this contract, we do not consider Alpha an "interested party" and its protest will not be considered. Kentucky Building Maintenance, Inc., B-196368, January 16, 1980, 80-1 CPD 49.

By letter dated November 12, 1979, Apex also questioned the Army's cost comparison on the basis that during a site visit, prior to bid opening, an Apex

manager observed "over ten" Army personnel performing work in and around the laundry that the Army did not count in computing its labor cost estimate.

Apex knew of this ground of protest prior to bid opening and the Army's cost evaluation was available to bidders either at or shortly after bid opening. As a result, the Apex challenge to the Army's cost comparison is untimely under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1980), because it was not raised within 10 working days of the date the underlying bases either were known or should have been known to Apex.

The protests are dismissed.

*Harry R. Van Cleave*

For Milton J. Socolar  
General Counsel

**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-195735,  
B-195735.2

April 8, 1980

The Honorable Robert W. Daniel, Jr.  
House of Representatives

Dear Mr. Daniel:

We refer to your letter to our Office dated November 13, 1979, in regard to the protest by Alpha Services, Inc., and Apex International Management Services, Inc., concerning the award of a contract under solicitation No. DABT59-79-B-0077 issued by the Department of the Army.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

*Harry R. Van Chuse*

for Milton J. Socolar  
General Counsel

Enclosure

