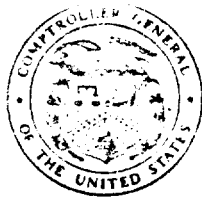


DECISION

24285
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-210534

DATE: February 18, 1983

MATTER OF: Shayne Brothers, Inc.

DIGEST:

Protest by large business against procurement set aside for small business concerns is dismissed under 4 C.F.R. § 21.2(b)(1) because it was not filed prior to bid opening.

Shayne Brothers, Inc. (SBI), protests against an award to anyone other than SBI under solicitation No. GS-11C-30038, a small business set-aside, issued by the General Services Administration. SBI complains that although it is the low responsive, responsible bidder, it is not being considered for an award because it is not a small business. SBI contends that an award to any other bidder could produce excessive costs to the Government of at least \$75,000 per year, or 19 percent. In addition, SBI points out that it is the incumbent contractor and is capable of continuing the work. We dismiss the protest.

Federal Procurement Regulations § 1-1.706-5(a)(2) (1964 ed. amend. 192) provides that procurements shall be set aside for small business concerns if there is a reasonable expectation that offers will be obtained from a sufficient number of small business concerns and that award will be made at a reasonable price. The decision as to whether such an expectation exists is basically a business judgment within the broad discretion of the contracting officials; accordingly, our review of challenges to set-aside decisions is generally limited to ascertaining whether there has been an abuse of discretion. Ingersoll-Rand, B-207005, April 12, 1982, 82-1 CPD 338.

In addition, SBI's protest is untimely under our Bid Protest Procedures, 4 C.F.R. part 21 (1982), which require protests based on alleged improprieties apparent in solicitations be filed with our Office prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1982). Here, the solicitation was clearly set aside for small business but SBI did not protest until 1 week after bid opening.

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The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel