

DECISION



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

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FILE: B-217286.2 DATE: April 16, 1985
MATTER OF: E. C. Wills Moving & Storage, Inc.

DIGEST:

1. A protest alleging that the low bidder, a small business concern, is nonresponsible is academic, where the contracting officer finds the bidder to be nonresponsible and the Small Business Administration does not issue a certificate of competency, thus precluding award to that bidder.
2. Alleged improprieties in an invitation for bids apparent prior to bid opening must be protested to either the contracting agency or GAO before the time set for opening bids.

E. C. Wills Moving & Storage, Inc. protests that Midway Moving and Delivery is not a responsible, prospective contractor under invitation for bids (IFB) No. F11623-84-B-0056, issued by the Department of the Air Force as a 100 percent small business set-aside. Wills also alleges that the solicitation was defective because it did not incorporate a Department of Labor wage determination. We dismiss the protest.

Wills' allegation that Midway is nonresponsible is academic. The preaward survey of Midway in certain areas was negative, and the survey team recommended that no award be made to the firm. The contracting officer accordingly declared the firm nonresponsible.

As required by the Federal Acquisition Regulation, 48 C.F.R. § 19.602-1(a) (1984), the contracting officer referred the matter to the Small Business Administration (SBA) for a final determination under the certificate of competency (COC) procedures. Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), the SBA is vested with the statutory authority to determine conclusively all elements of a small business concern's

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responsibility by either issuing or declining to issue a COC. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD ¶ 322.

The Air Force has advised this Office that the SBA has closed its file in the matter without issuing a COC because Midway did not submit necessary information concerning its responsibility as requested. Therefore, Midway may not be awarded the contract. See Grantex Industries, Inc., B-216933, Nov. 26, 1984, 84-2 CPD ¶ 561.

As to the allegation that the IFB was defective because it failed to incorporate a Department of Labor wage determination, the issue is clearly untimely, as it involves an alleged impropriety in the solicitation apparent prior to bid opening. Such alleged improprieties must be protested to either the contracting agency or this Office before the time set for opening of bids. Grace Industries, Inc., B-216224, Sept. 6, 1984, 84-2 CPD ¶ 262. Here, bids were opened on December 3, 1984, but Wills did not raise the issue until nearly 4 months later when commenting on the Air Force's administrative report. Therefore, the issue will not be considered.

The protest is dismissed.

Ronald Berger

Ronald Berger
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