



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Detroit Armor Corporation--Request for
Reconsideration
File: B-227432.2
Date: July 9, 1987

DIGEST

1. Since the Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, the General Accounting Office does not review size status determinations.
2. Protest against procurement set aside for small business concerns is untimely when filed after bid opening.
3. General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness rules where the protest does not raise an issue of first impression that would have widespread significance to the procurement community.

DECISION

Detroit Armor Corporation (DAC) requests that we reconsider our June 10, 1987, dismissal of its protest of any award under invitation for bids (IFB) No. 3-7-84, issued by the United States Department of the Interior. We affirm the dismissal.

In its initial protest, DAC objected to the protests filed by other bidders with the Small Business Administration (SBA) concerning DAC's small business size status, and contended that the IFB should not have been set aside for small business. We dismissed DAC's first basis of protest because bidders have a right to protest another bidder's size status and, under 15 U.S.C. § 637(b)(6) (1982), the SBA is empowered to conclusively determine matters of size status for federal procurement purposes, and we therefore

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neither make nor review size status determinations. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(2) (1986); Junger Utility and Paving Co., B-223557, July 15, 1986, 86-2 CPD ¶ 71. We dismissed DAC's second basis of protest as untimely because the set-aside nature of the procurement was apparent from the solicitation but was not protested until June 9, 1987, well after the April 28, 1987, bid opening. Our Bid Protest Regulations require that such a protest based upon an alleged impropriety in a solicitation be filed before bid opening. 4 C.F.R. § 21.2(a)(1); Shayne Brothers, Inc., B-210534, Feb. 18, 1983, 83-1 CPD ¶ 175.

In its request for reconsideration, DAC asserts that it was not protesting the award under IFB No. 3-7-84, but rather was objecting to protests filed against it by other bidders, and therefore does not understand why we dismissed its post-opening protest as untimely. DAC contends we should address its argument that the award to an eligible small business will cost the government twice as much as an award to DAC.

As noted above, we dismissed DAC's objections to protests filed by other bidders about DAC's small business size status not because DAC's objections were untimely, but because we neither make nor review size status determinations. It was DAC's objection to the small business set-aside nature of the procurement that we considered untimely, since it was evident when the solicitation was issued that the procurement was set aside for small businesses and the protest should have been submitted prior to bid opening.

To the extent DAC believes we should consider its protest even though it is untimely, we will consider an otherwise untimely protest only when the protest raises an issue of first impression that would have widespread significance to the procurement community. 4 C.F.R. § 21.2(c); McCain Associates, B-226533, Mar. 23, 1987, 87-1 CPD ¶ 336. The protest does not meet this standard, and we therefore will not consider it, because we have previously considered the issue of additional government expense resulting from competition limited to small businesses. See, e.g., Shayne Bros., Inc., B-197175.3, May 22, 1981, 81-1 CPD ¶ 404.

Our dismissal of the prior protest is affirmed.


Harry R. Van Cleve
General Counsel