

Burkard



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Basic Supply Company, Inc.

File: B-239267

Date: June 1, 1990

Joseph L. Williams, for the protester.
Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of bids based on application of an evaluation preference not provided for by solicitation would be improper.
2. Protest that solicitation should have included an evaluation preference for small disadvantaged business concerns is untimely, since it alleges a solicitation impropriety apparent before bid opening but was not filed before that time.

DECISION

Basic Supply Company, Inc., a small disadvantaged business (SDB) concern, protests the award of a contract to Williams and Company, Inc., the low bidder under invitation for bids (IFB) DLA700-90-B-0524, issued on an unrestricted basis by the Defense Construction Supply Center for nickel alloy pipe. Basic argues that it was entitled to receive an evaluation preference for SDB concerns which would have rendered its bid low. Basic requests that the agency terminate its contract with Williams and resolicit the requirement.

We dismiss the protest.

The IFB was issued on November 28, 1989, and ten bids were received prior to the January 10, 1990 bid opening. The agency concedes that while notice of the evaluation preference for SDB concerns should have been incorporated in the solicitation, that clause was inadvertently omitted.

C48667/19517

The agency awarded the contract to the low bidder without applying any evaluation preference. Basic then filed a protest with the agency; when the agency denied the protest, Basic protested here.

The longstanding rule is that the evaluation of bids must be in accordance with the evaluation provisions of the IFB; in the absence of solicitation language providing for application of a preference, evaluation on the basis of a preference would be improper. Mycon Construction Co., Inc., B-231544, June 14, 1988, 88-1 CPD ¶ 572.

To the extent Basic contends that the solicitation should have contained the SDB evaluation preference clause, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), provide that a protest based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed either with the agency or this Office prior to opening to enable the contracting agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. See Mycon Construction Co., Inc., supra. Here, the absence of the SDB evaluation preference clause in the solicitation should have been apparent to all bidders. Basic should therefore have filed its protest prior to the January 10 bid opening.

The protest is dismissed.



Ronald Berger
Associate General Counsel