



Comptroller General
of the United States

3362513

Washington, D.C. 20548

Decision

Matter of: RAI, Inc.
File: B-255006
Date: October 21, 1993

Neal H. Ruchman for the protester,
Charles A. Walden, Esq., Drug Enforcement Administration,
for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that the agency failed to notify unsuccessful offerors on a small business set-aside of the name and location of apparent successful offeror is dismissed, because the notice was not required since the contracting officer determined in writing that the award was required to be made without delay.

DECISION

RAI, Inc. protests the award of a contract to Victory Van Corporation under request for proposals (RFP) No. DEA-93-R-0007, a small business set-aside, issued by the Drug Enforcement Administration (DEA) for moving and warehouse services. RAI argues that the agency improperly failed to provide notice of contract award prior to award.

We dismiss the protest because it does not state a valid basis.

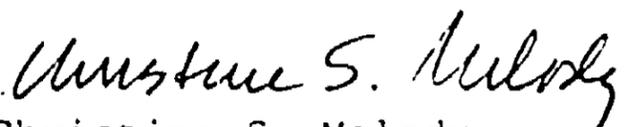
The solicitation, which was issued on April 27, 1993, contemplated award of a firm, fixed-price requirements contract for the necessary labor and equipment to perform various moving and warehouse services within the Washington, D.C. area. Eight proposals, including one from RAI, were submitted. After the evaluation of proposals, discussions, and the submission of best and final offers, the agency found that seven proposals were technically equal, and awarded the contract to the lowest-priced offeror, Victory, on September 9.

RAI contends that the agency violated the Federal Acquisition Regulation (FAR) by failing to provide it with notice of contract award prior to award. When a procurement is set aside for small business, before award the contracting officer generally must notify each unsuccessful

offeror in writing of the name and location of the apparent successful offeror in order to permit preaward challenges of the awardee's small business status. FAR § 15.1001(b)(2). However, where the contracting officer determines in writing that the urgency of the requirement necessitates award without delay, the notice is not required. Id. Here, the contracting officer made the required written determination on September 3, prior to the award to Victory. Thus, the protester's complaint that it did not receive a preaward notice, standing alone, fails to establish that the agency violated any procurement law or regulation. National Medical Staffing, Inc., B-242506, Feb. 8, 1991, 91-1 CPD ¶ 144.

In any event, RAI clearly was not prejudiced by the fact that it did not receive preaward notice of the contract award, since, after this protest was filed, DEA referred the matter over to the Small Business Administration (SBA) for a size status determination; on October 13, SBA found that Victory was a small business. See Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

¹Other than a cursory statement in its comments filed in response to the agency report, RAI does not dispute the reasonableness of the agency's urgency determination, which was based upon DEA's need to expedite mandatory background investigations of all persons employed by the successful contractor in order to avoid an unduly burdensome delay in performance of the services. Accordingly, we find no basis for questioning the reasonableness of DEA's urgency determination.

²RAI's allegation, raised for the first time in its comments on the agency's report, that Victory was not the low-priced offeror, is untimely, as the protester was on notice of this basis of protest no later than September 15, when it received notice of the award. See 4 C.F.R. § 21.2(a)(2) (1993).