



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Wesley Medical Resources, Inc.
File: B-254843.4
Date: August 25, 1994

DECISION

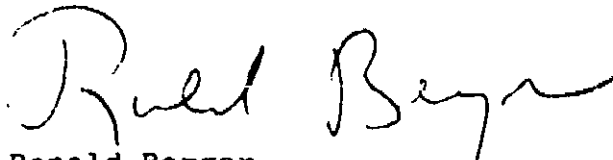
Wesley Medical Resources, Inc. protests the Department of the Army's failure to require small business status recertification when it issued amendment No. 7 to solicitation No. DADA10-93-R-0061. According to Wesley, the amendment materially modified the solicitation so that under 13 C.F.R. § 121.904(c) offerors should have been required to recertify their status.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation, incorporated after initial submission of offers, that should have been protested before the next closing date. In this regard, amendment No. 7 was issued on April 11, 1994, and provided for a closing date of April 22. Wesley's protest that the Army failed to require small business status recertification with the issuance of amendment No. 7 should have been filed by April 22; it was not filed in our Office until July 21.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

We point out that regardless of whether the contracting officer requests a recertification in cases like this, if there is a challenge to an offeror's small business size status it is for the Small Business Administration to determine as of which date it will determine the offeror's size status. See Wesley Medical Resources, Inc., B-257677, Aug. 17, 1994, 94-2 CPD ¶ ____.

The protest is dismissed.



Ronald Berger
Associate General Counsel