

DECISION

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

FILE: B-220386

DATE: January 08, 1986

MATTER OF: Arrowhead Construction, Inc.

DIGEST:

1. Protest challenging contracting agency's decision, evident from solicitation, not to publicly open bids in procurement using simplified small purchase procedures is untimely, since protest was not filed before date for submission of bids.
2. Protest challenging contracting agency's decision to award a contract to a firm which did not attend allegedly mandatory site visit is timely where filed within 10 days after the protester was notified that award would not be made to either of the only two bidders who had attended the site visit.
3. Agency properly could award contract to firm which did not attend initial site visit as required by original solicitation since amendment to solicitation providing for second site visit effectively superseded requirement for attendance at initial site visit and, in any event, even assuming the amended solicitation retained the site visit requirement, a firm's failure to attend a site visit is not a valid basis to reject an otherwise acceptable offer.

Arrowhead Construction, Inc., protests the rejection of its bid under invitation for bids (IFB) No. N62477-85-B-2163, issued by the Navy for installation of a paint booth at the Marine Corps Development and Education Command, Quantico, Virginia. We dismiss the protest in part and deny it in part.

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The solicitation ^{1/} was issued on September 11, 1985, as a small business set-aside using the simplified procurement procedures for small purchases. See 10 U.S.C.A. § 2304(g) (West Supp. 1985), as amended by the Competition in Contracting Act of 1984; 15 U.S.C. § 644(j) (1982); Federal Acquisition Regulation (FAR), 48 C.F.R. part 13 (1984). The solicitation provided that all prospective bidders were required to attend a site visit to be held on September 26. The solicitation also contained two provisions stating that the bids received would be "privately opened." The protester and one other potential bidder, Air Conditioning Services, attended the site visit on September 26.

Amendment No. 1 to the solicitation was issued on September 27, indefinitely postponing the date for submission of bids. Amendment No. 2 was issued on October 3, setting October 10 as the new bid opening date and advising bidders that a site visit would be held on October 8. The protester and the other firm which had attended the September 26 site visit also attended the site visit on October 8, along with two other firms which had not attended the first site visit, Phillip C. Clarke Electrical Contractors and another firm.

On October 10, bids were received from three firms, as follows:

-- Air Conditioning Services:	\$11,980
-- the protester:	\$ 8,862.62
-- Phillip C. Clarke Electrical Contractors:	\$ 8,600

The government estimate was \$7,316.

The protester was notified that day that neither its bid nor the bid submitted by Air Conditioning Services was the low bid; the contracting official, however, did not advise the protester of the amount of the low bid or the identity of the low bidder. The protester then sent a letter dated October 14 to the Navy, calling it a "Potential

^{1/} As discussed further later, the Navy's intention was to issue a request for quotations using the FAR small purchase procedures. The solicitation, however, was issued as an IFB. We will refer to it as the "solicitation" and to the participating firms and their quotations as "bidders" and "bids."

protest of Award" and raising certain improprieties the protester believed had taken place in the procurement. The letter resulted in a meeting between the protester and contracting officials on October 17. On October 24, the protester filed its protest with our Office.

The protester challenges the propriety of the procurement on two grounds, contending that it was improper (1) not to hold a public bid opening; and (2) to award a contract to a bidder who had not attended the site visit on September 26. The Navy contends that both these issues are untimely raised because the Navy's intentions not to open bids publicly and to hold a second site visit were apparent before the bid opening date from the solicitation and amendments. Accordingly, the Navy argues, the protester was required to file its protest on these grounds before bid opening. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985).

We agree that the protest is untimely to the extent that it challenges the Navy's failure to hold a public bid opening. The solicitation twice states that bids would be opened "privately." As a result, the protester was on notice of this alleged impropriety from the face of the solicitation and was required to file its protest on this ground before bid opening on October 10. 4 C.F.R. § 21.2(a)(1). Since the protest was not filed until October 24, it is untimely.

In any event, we find the protester's argument without merit. As a preliminary matter, we note that the terminology used throughout the solicitation is not uniform--referring in different places to "sealed bids," "quotes," and "proposals"--and thus could have caused confusion among participating firms regarding whether the Navy intended it as a request for quotations, an IFB, or a request for proposals. In addition, the solicitation cited a superseded statutory provision authorizing the use of negotiated procedures for small purchases (10 U.S.C. § 2304(a)(3)^{2/}) as the basis for the planned "private" opening of bids.

Despite the poor drafting of the solicitation, however, it is clear that the Navy properly could contract for installation of the paint booth using the simplified small

^{2/} The current authority for the use of small purchase procedures is 10 U.S.C.A. § 2304(g) (West Supp. 1985).

purchase procedures, which apply to purchases under \$25,000. FAR, 48 C.F.R. § 13.000. The FAR small purchase procedures are intended to minimize the administrative cost that otherwise might equal or exceed the cost of acquiring relatively inexpensive items or services. See FAR, 48 C.F.R. § 13.102; Gradwell Co., Inc., B-216480, Feb. 8, 1985, 85-1 CPD ¶ 166. In contrast to other procurements, the small purchase procedures require only that the procurement be conducted "to promote competition to the maximum extent practicable." 10 U.S.C.A. § 2304(g)(4); FAR, 48 C.F.R. § 13.106(b). For purchases over \$1,000, the contracting officer must solicit quotations from a reasonable number of qualified sources, taking into account the price and administrative cost of the purchase. FAR, 48 C.F.R. § 13.106(b). Quotations generally may be solicited orally, FAR, 48 C.F.R. § 13.106(b)(2), and there is no requirement that the firms submitting quotations be advised of the other quotations received. Thus, the fact that the Navy did not hold a public "bid opening" was not improper. Further, the Navy complied with the requirement for promoting competition to the maximum extent practicable by soliciting and receiving quotations from three firms and awarding the contract to the firm offering the lowest price.

With regard to the protester's second basis of protest--the propriety of making an award to a firm which did not attend the first site visit--we find this issue timely raised. While, as the Navy argues, the Navy's plan to hold a second site visit was apparent from amendment No. 2 to the solicitation, the protester was not on notice that the Navy planned in effect to waive the requirement for attendance at the first site visit until the protester was advised after bid opening on October 10 that the Navy had rejected both its bid and the bid from the only other firm which had attended both site visits. Since the protest was filed on October 24, within 10 days after the protester was put on notice on October 10, the protest on this ground is timely. 4 C.F.R. § 21.2(a)(2).

We nevertheless find the protester's argument to be without merit. First, in our view, the only reasonable interpretation of the provision in amendment No. 2 announcing the second site visit is that it superseded the site visit requirement in the original solicitation; we see no reasonable basis on which the Navy could limit the procurement to those firms which had attended the initial site visit, as the protester's interpretation would require. In any event, the protester's failure to make a site

visit, even where the solicitation so requires, is not a valid basis on which to reject an otherwise responsive bid. Edward Kocharian & Co., Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD ¶ 20. Accordingly, even assuming that the solicitation contained a mandatory site inspection provision, a firm's failure to attend the site visit would not provide a basis on which to reject its offer.

The protest is dismissed in part and denied in part.

for Seymour Gra
Harry R. Van Cleve
General Counsel