

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

26759

FILE: B-211479.3

DATE: November 15, 1983

MATTER OF: Lavelle Aircraft Company--Reconsideration.

DIGEST:

Section 223(a), Pub. L. No. 95-507, 92 Stat. 1757, and implementing Defense Acquisition Regulation § 1-1002.1 (Defense Acquisition Circular No. 76-24, August 28, 1980), require that a small business, upon its request, shall be provided with a copy of bid sets and specifications concerning a particular contract and the law provides no exception to this responsibility. However, the law only becomes operative where an agency refuses a small business request and an untimely agency response apparently because of agency mishandling of the request is not refusal.

Lavelle Aircraft Company (Lavelle) requests reconsideration of our decision in Lavelle Aircraft Company--Reconsideration, B-211479.2, September 2, 1983, 83-2 CPD ____, in which we affirmed our prior decision Lavelle Aircraft Company, B-211479, August 2, 1983, 83-2 CPD 160. In those decisions, we denied Lavelle's protest that a total small business set-aside, invitation for bids No. DAAA09-83-B-4629, issued by the United States Army Materiel Development and Readiness Command (Army), should be canceled and the requirement resolicited because Lavelle failed to receive a copy of the solicitation prior to bid opening. Lavelle contended that the Army violated section 223(a), Pub. L. No. 95-507, 92 Stat. 1757, and implementing Defense Acquisition Regulation § 1-1002.1 (Defense Acquisition Circular No. 76-24, August 28, 1980), which provide that a small business, upon its request, shall be provided with a copy of the bid sets and specifications concerning a particular contract.

Lavelle contends that our decisions contain a material error of law. Lavelle asserts that under the law and regulation, a procurement activity is required to provide a bid set and specifications to a small business which requests them. Since Lavelle requested a solicitation package and failed to receive one in a timely manner, Lavelle argues the request improperly was denied. Lavelle further contends

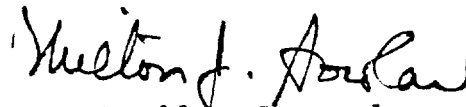
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that the fact that the denial was apparently based on the exhaustion of copies does not excuse the Army from its legal obligation. Lavelle states that it should have been sent a copy of the solicitation within a reasonable period of time after the agency's receipt of Lavelle's request consistent with normally efficient administrative procedures and with recognition of the need to provide the bidder the solicitation in time to prepare and submit a timely bid.

We agree with Lavelle that the law and regulation impose a mandatory obligation on procuring activities to honor a request by a small business for a copy of the bids sets and specifications. We did not intend to suggest otherwise in our decisions. However, as we stated in our prior decisions, the statute becomes operative when a small business request for a bid set is refused. We do not agree with Lavelle that in this case there was refusal to honor Lavelle's request.

The record indicates that the Army apparently mishandled Lavelle's request for a bid set. The agency acknowledges it received Lavelle's request 1 month prior to bid opening, but, for causes it cannot identify, failed to respond until the Friday before the Monday bid opening, apparently only after Lavelle renewed its request which resulted in Lavelle receiving the bid package late. The agency also indicates that the failure to respond timely to Lavelle's initial request was not a deliberate effort to exclude Lavelle from the competition. However, in this regard, the Army's procedures appear not to have been adequate to assure that a timely filed small business request would be responded to in sufficient time to allow the firm to prepare and submit a timely bid. We are, therefore, advising the Secretary of the Army of this apparent inadequacy and recommending that the procedures be reviewed to indentify and correct any inadequacies.

We affirm our prior decisions.



Acting Comptroller General
of the United States