

DL-1

12603

**DECISION**



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

*[Protest Alleging that IFB Was Defective]*

FILE: B-197175

DATE: January 22, 1980

MATTER OF: Armada, Inc.

**DIGEST:**

1. Incumbent contractor's protest after bid opening that estimated quantity in solicitation does not accurately reflect actual amount of work to be performed under contract is dismissed as untimely filed. As incumbent contractor, protester presumably knew amount of work performed under predecessor contract; inaccuracy of estimate was apparent from solicitation, requiring timely filing of protest prior to bid opening.
2. Protest after bid opening that allegedly inflated Government estimate resulted in procurement not being set aside for small business participation and discouraged small business competition is untimely filed because unrestricted nature of procurement was apparent from solicitation, requiring timely filing of protest before bid opening.

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*ARMADA 2427*

Armada, Inc. (Armada), questions the accuracy of a General Services Administration, Public Buildings Service (GSA), estimate in invitation for bids (IFB) No. GS-11C-00030, contending that the quantity was so grossly overestimated as to render the IFB defective and that GSA should therefore cancel the IFB and resolicit its requirements. The protest is dismissed as untimely filed for the reasons discussed below.

The IFB, issued on November 14, 1979, is for a 1-year requirements contract to remove and dispose of trash and debris from Government buildings in Washington, D.C. Bid opening was held on December 6, 1979, but award has been withheld pending resolution of the protest. We received Armada's December 13 protest telegram on December 14, 1979.

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The IFB provides that the bidders' unit price for item 2 (debris and contaminated wood removal) is to be multiplied by 85,000, the monthly, cubic-yard estimate of the materials to be removed. Armada, however, asserts that the actual monthly requirement is approximately 25,000 cubic yards and that the quantity stated in the IFB represents a 352-percent overestimate of the agency's anticipated requirements. (We note that using the figures Armada suggests, the difference is actually 340 percent.) The protester concludes that an error of this magnitude renders the IFB deceptive and that it neither adequately appraises bidders of the Government's requirements nor ensures the Government of the lowest available price.

Armada also contends that if an accurate estimate had been used in the IFB the procurement would have been more favorably considered for a small business set-aside. The protester believes that the estimate suggests that only bidders who have sufficient equipment to handle such a large volume of trash could reasonably submit a competitive bid.

The estimate to which Armada takes exception was included in and readily apparent from the IFB, requiring the timely filing of a protest concerning any deficiency in the estimate prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1979). Moreover, we have informally ascertained from GSA that the protester is the incumbent contractor. As the incumbent contractor, Armada presumably knew the actual quantity of services performed under the predecessor contract. Upon receipt of the IFB, Armada was in a unique position to know that the IFB estimate was apparently inaccurate. Free State Builders, Inc., B-183864, September 23, 1975, 75-2 CPD 172, aff'd, October 28, 1975, 75-2 CPD 257. Armada's protest, filed with our Office 6 working days after the bid opening, is untimely filed and not for consideration on the merits. Columbia Loose Leaf Corp., B-189943, September 19, 1977, 77-2 CPD 203; Free State Builders, Inc., supra.

Armada's protest concerning the effect of the estimate on the nature of the procurement is twofold: 1) that the IFB should have been set aside for small business participation and 2) that the IFB estimate may have discouraged, and was therefore unduly restrictive of, small business competition. The fact that the procurement was not being effected as a set-aside was apparent from the IFB and a protest on this ground in order to be timely should have been made before the bid opening. See, RCA Corporation, et al., 57 Comp. Gen. 810, 814 (1978), 78-2 CPD 213.

Because it is clear from the protester's initial submission that the protest is not reviewable, we have decided the matter on the basis of this submission without requesting an agency report. F&H Manufacturing Corporation, B-195954, September 28, 1979, 79-2 CPD 231.

The protest is dismissed.



Milton J. Socolar  
General Counsel