

Pettie

18208

**DECISION**



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

*[Protest of GSA Contract Award]*

FILE: B-197175.3

DATE: May 22, 1981

MATTER OF: Shayne Bros., Inc.

**DIGEST:**

1. Protest filed after bid opening by large business firm that it was precluded from bidding because solicitation restricts competition exclusively to small businesses is dismissed as untimely.
2. Government may pay reasonable premium price to small business firms in implementing congressional policy of Small Business Act, 15 U.S.C. § 631, *et seq.* (1976), to award fair proportion of Government contracts to such firms.

Shayne Bros., Inc., which is apparently a large business concern, protests the award of contract No. GS-11C-00162 by the General Services Administration (GSA) to Mac's Trash Disposal, Inc., for trash and debris removal and disposal services from Government buildings in Washington, D.C., contending that it has been precluded from bidding on the contract because the solicitation is a total small business set-aside.

Shayne was awarded the immediately preceding contract for these services in March 1980 following our dismissal of a protest by the then incumbent contractor against the terms of the solicitation under which the contract was subsequently awarded. Armada, Inc., B-197175, January 22, 1980, 80-1 CPD 65. The protester states that its average monthly contract price for the services in question was \$28,570.59 (\$342,847.08 annually) and asserts that the award to Mac's Trash in the amount of \$390,500.88 will cost the Government an additional \$47,653 because GSA

*017009*

115310

did not allow competitive market forces to determine the contract price. Shayne asks that the contract awarded to Mac's Trash be canceled and that GSA's requirements be resolicited on an unrestricted basis.

The protest is dismissed in part and denied in part.

The solicitation was issued on November 18, 1980, bid opening was held on December 11, 1980, and the contract was awarded to Mac's Trash on April 24, 1981. Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation be filed before bid opening. 4 C.F.R. § 20.2(b)(1) (1980). Because the alleged defect, the small business restrictive method of procurement chosen by GSA, was apparent from the solicitation and Shayne's protest on this basis was not filed with our Office until May 4, 1981, after both the bid opening and the award, it is not timely presented for our consideration. RCA Corporation, et al., 57 Comp. Gen. 809, 814 (1978), 78-2 CPD 213; Octagon Process, Inc., B-189805, October 19, 1977, 77-2 CPD 304.

As to the protest against the additional Government expense resulting from the competition limited to small business concerns, we have long recognized that the purpose of the set-aside program is to award a fair proportion of Government contracts to small business firms and that the Government may pay a reasonable premium price to small business firms in order to implement the congressional policy reflected in the Small Business Act, 15 U.S.C. § 631, et seq. (1976). Society Brand Incorporated, et al., 55 Comp. Gen. 372 (1975), 75-2 CPD 225.

Because the protester's initial submission is untimely and otherwise without merit, we have decided the matter on the basis of this submission without

B-197175.3

3

requesting an agency report. Hardwick Knitted Fabrics, Inc., B-201245, December 16, 1980, 80-2 CPD 435; Armada, Inc., *supra*; F&H Manufacturing Corporation, B-195954, September 28, 1979, 79-2 CPD 231.

*Milton J. Fowler*

Acting Comptroller General  
of the United States