



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Clean America, Inc.
File: B-237341
Date: February 9, 1990

William H. Butterfield, Esq., McGuire, Woods, Battle & Boothe, for the protester.
Vicki E. O'Keefe, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Catherine M. Evans, and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that late bid should not have been rejected is dismissed as academic where record indicates that bid was not low and that protester thus would not be in line for award even if General Accounting Office found that bid should have been accepted.

DECISION

Clean America, Inc. (CAI), protests the rejection of its bid as late under invitation for bids (IFB) No. N62477-89-B-1056, issued by the Marine Corps Combat Development Command in Quantico, Virginia. CAI alleges that the bid should be accepted because government mishandling or government misinformation was the primary cause of the lateness. CAI also alleges that the award to the low acceptable bidder, Browning Ferris Industries, Inc. (BFI), was improper because BFI is a large business and therefore ineligible for award.

We dismiss the protest.

CAI's argument that BFI, a large business, is ineligible for award is premised on its understanding that the solicitation was set aside for small business concerns. However, the solicitation in fact was not a small business set-aside; it was advertised as unrestricted in the Commerce Business Daily, did not include Federal Acquisition Regulation clause 52.219-6, Notice of Total Small Business Set Aside, and nowhere else provided that the competition was

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restricted to small business concerns. (The agency informs us that the notice of size standard was included in the solicitation to allow bidders properly to complete the certification of business size for purposes of the Small Business Competitive Demonstration program, under which certain industry groups are targeted for testing whether small businesses are capable of competing successfully with large businesses.) The protest against award to BFI therefore is without merit.

Although CAI's late bid has not been opened, CAI has confirmed that its bid was not lower than BFI's. This being the case, CAI would not be in line for award even if we agreed that its bid should have been accepted. Thus, as no useful purpose would be served by considering this aspect of the protest, we dismiss it as academic. See Systems and Simulation, Inc., B-236315, Aug. 18, 1989, 89-2 CPD 153.

The protest is dismissed.

Michael L. Zolten

for

Ronald Berger
Associate General Counsel