

DECISION

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

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FILE: B-216540**DATE:** October 22, 1984**MATTER OF:** Clean Keepers Rubbish Removal, Inc.**DIGEST:**

Protest of amendment making solicitation initially issued as a total small business set-aside an unrestricted procurement filed with both contracting agency and our Office after bid opening is untimely since agency's publication of amendment in Commerce Business Daily placed protester on notice of basis of protest prior to bid opening.

Clean Keepers Rubbish Removal, Inc. protests the award of a contract to Topeka Waste Systems under solicitation No. 677-68-84 issued by the Veterans Administration (VA) for refuse removal services at the Colmery-O'Neil VA Medical Center, Topeka, Kansas. Clean Keepers contends that the agency improperly removed the small business set-aside restriction on this procurement because there were several small business concerns available to compete for this contract.

We dismiss the protest as untimely.

The VA issued this solicitation as a total small business set-aside on July 18, 1984 and the requirement was advertised in the Commerce Business Daily (CBD) on July 20. The agency, however, subsequently determined that it could not reasonably expect offers from at least two responsible small business concerns and it therefore published in the CBD of August 23 an amendment to this solicitation which provided that competition would be unrestricted instead of set aside for small business. Bids were opened on September 6 and the following day Clean Keepers initially protested the unrestricted nature of the procurement to the VA. The VA denied that protest by letter of September 12. Clean Keepers then filed its protest on the same issue with our Office on September 25.

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Our Bid Protest Procedures require that protests based upon alleged solicitation improprieties which were or should have been apparent prior to bid opening must be filed with either our Office or the contracting agency prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). On the basis of the record it appears that Clean Keepers saw the notice of the amendment in the CBD of August 23, but even if it did not, we have held that publication of a notice in the CBD constitutes constructive notice of the solicitation and its contents. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 CPD ¶ 55. Clean Keepers therefore is charged with notice of the VA's amendment of this solicitation from a small business set-aside to an unrestricted procurement. Thus, Clean Keepers' protest alleging this apparent solicitation impropriety filed with both the contracting agency and our Office after bid opening is untimely.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel