



Comptroller General  
of the United States

Washington, D.C. 20548

J. Vickers

## Decision

**Matter of:** Environmental Safety Consultants, Inc.

**File:** B-241390

**Date:** October 25, 1990

Ronald G. Robey, Esq., Smith, Currie & Hancock, for the protester.

James Vickers, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that solicitation should have been set aside for small disadvantaged businesses filed after bid opening is untimely since solicitation indicated it was issued on an unrestricted basis and protests concerning alleged improprieties in a solicitation must be filed prior to bid opening.

### DECISION

Environmental Safety Consultants, Inc. (ESC) protests that solicitation No. F08602-90-B0070, issued by MacDill Air Force Base, Florida, for excavation of petroleum contaminated soil should have been a small disadvantaged business (SDB) set-aside.

We dismiss the protest as untimely.

A pre-solicitation notice published in the July 17, 1990, Commerce Business Daily invited SDB firms to express an interest in fulfilling the requirement. ESC, an SDB, expressed an interest in the procurement. However, when the solicitation was issued on August 8, paragraph No. 3 of the solicitation's Special Contract Requirements indicated that the procurement was being conducted on an unrestricted basis.

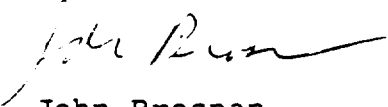
Bids were opened on September 18. ESC submitted the highest of the three bids received. The two low bidders were large businesses. Award was made on September 28, to the low bidder. ESC protested to our Office on October 1.

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ESC contends that the Air Force did not comply with the requirements of the Department of Defense Federal Acquisition Regulation Supplement Part 219 in deciding to issue the solicitation on an unrestricted basis.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1990). Here, it was clear from the face of the solicitation that the procurement was being conducted on an unrestricted basis. GEO Marine Resources, B-233776.3, Jan. 24, 1989, 89-1 CPD ¶ 72. Therefore, ESC's protest filed after bid opening is untimely.

The protest is dismissed.



John Brosnan  
Assistant General Counsel