

McAuliffe

144-800



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** American Kleaner Mfg. Co., Inc.

**File:** B-243901.2; B-243901.3

**Date:** September 10, 1991

Stephen B. Wishek for the protester,  
Karen R. O'Brien, Department of the Army, for the agency,  
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Protest that agency deprived contractor of opportunity to submit an offer because agency did not advertise the procurement in the Commerce Business Daily (CBD) is denied where the contracting officer determined that a CBD synopsis was not required, pursuant to Federal Acquisition Regulation § 5.202(a)(12), since at the time the solicitation was issued the agency reasonably expected an overseas procurement for which competition was to be limited to local sources.

### DECISION

American Kleaner Mfg. Co., Inc. protests the award of a contract under request for proposals (RFP) No. DASA01-91-R-0062, issued by the Army for 1,000 portable pressure washers, and related training, to clean military equipment used in Operation Desert Shield/Storm. The protester contends in essence that even though it has supplied pressure washers to the Army in the past, it was denied an opportunity to compete under the solicitation because the agency improperly failed to advertise the procurement in the Commerce Business Daily (CBD).

We deny the protest.

The solicitation was issued by the Army through its contracting office at King Abdul Aziz Air Force Base, Dhahran, Saudi Arabia, on April 13, 1991. The RFP, as amended, contemplated the award of a firm, fixed-price contract for 1,000 portable washers (with the option to purchase 500 additional washers) for use by the Army in Saudi Arabia to clean the vehicles and equipment used in the Desert Shield/Storm operations. The portable pressure washers inject cleaning compounds and

disinfectant agents into a high-pressure water spray. The Army required these units to clean military equipment prior to its return or redeployment in order to comply with the Department of Agriculture's sanitation specifications aimed at protecting the safety of United States citizens and agriculture. The agency considered prompt delivery of the washers (i.e., within 21 days after receipt of the delivery order) critical to meet its sanitation needs and to insure against any delays in the return or redeployment of equipment and personnel.

The solicitation, as issued, required the delivery of the 1,000 pressure washers to the Port of Damman Railyard, Saudi Arabia. The RFP also provided for training in Saudi Arabia for Army personnel regarding the use and maintenance of the washers. Based upon the Army's determination that adequate competition existed in the area, the agency concluded that only local sources would be solicited for the requirement. A copy of the RFP was posted for public viewing at the issuing office in Saudi Arabia.

Seven proposals were timely received in response to the RFP by the April 20, 1991, closing date at the Army location in Saudi Arabia designated for submission of offers. Two other proposals, including one submitted by American Kleaner, were received after the closing date for the receipt of proposals and were rejected in accordance with the RFP's provision (referencing FAR § 52.215) that proposals received after the exact time specified for receipt will not be considered.<sup>1/</sup> Best and final offers (BAFOs) were requested on April 26 from two firms whose proposals were determined to be in the competitive range. These offerors were requested to include in their BAFOs prices for delivery of the 1,000 washers to Damman Railyard, Saudi Arabia, and, alternatively, to Dover Air Force Base (AFB), Delaware, for shipment to Saudi Arabia by government carrier. Award was made on May 3 to International American Products, Inc., on the basis of delivery to Dover AFB.

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<sup>1/</sup> American Kleaner also challenges the rejection of its proposal, arguing that even though received late, its proposal should be considered for award. FAR §§ 15.412(c) and 52.215-10 provide that a late proposal may be considered only under certain limited circumstances (i.e., regarding time and method of mailing the proposal, and government mishandling of the document after receipt at the government installation). Since American Kleaner concedes its proposal was late, and the protester does not invoke any of the referenced exceptions permitting acceptance of late proposals, the agency had no basis to accept the proposal.

American Kleaner argues that because the procurement was not advertised in the CBD, it was improperly denied an opportunity to submit an offer under the RFP. American Kleaner contends that FAR § 5.202(a)(12), an exception to the general requirement at FAR § 5.201 for CBD publication of proposed contract actions, does not apply here because delivery of the washers actually took place at Dover AFB and because offerors proposed washers manufactured in the United States.

Federal Acquisition Regulation (FAR) § 5.202(a)(12) provides that a proposed contract action need not be advertised in the CBD where "[t]he contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited."

The record shows that at the time the Army initiated the procurement in the war zone in Saudi Arabia, the contracting officer expected the competition to be limited to firms in that region and planned to solicit only local sources. Although delivery of the washers under the contract ultimately took place at Dover AFB (pursuant to the alternate delivery terms introduced for the first time in the Army's request for BAFOs), there is nothing in the record which shows that at the time the RFP was issued in Saudi Arabia the agency expected contract award and performance to take place anywhere other than in Saudi Arabia or that offers from other than local sources would be received. Thus, pursuant to the publication exception at FAR § 5.202(a)(12), we have no reason to question the propriety of the agency's determination not to advertise the proposed contract action in the CBD.

The protest is denied.2/

  
for James F. Hinchman  
General Counsel

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2/ During the course of its initial protest, American Kleaner filed an additional protest claiming that the Army "may be circumventing the protest process by buying same and similar items through other means." The Army denies this contention and states that it has not purchased any additional washers since the award of the contract under the present RFP. In its comments to the agency's response, the protester states that it has no additional information to support its allegation of impropriety. We find that this protest allegation is not supported by the record.