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DECISION



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

FILE: B-190549

DATE: March 13, 1978

MATTER OF: International Business Telephone, Inc.

DIGEST:

Contentions--that agency failed (1) to properly obtain delegation of procurement authority, (2) to obtain maximum possible competition, (3) to insure that equipment will satisfy its needs, (4) to protect against excess charges, and (5) to justify sole-source procurement in circumstances--are based on information known to protester more than 10 working days prior to date protest was filed; under GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2)(1977), protest is untimely and will not be considered.

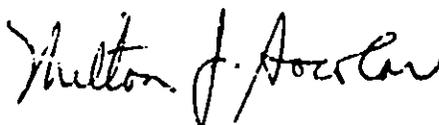
International Business Telephone, Inc. (IBT), protests the sole-source award of contract No. 06-7-043-61027 by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), to the New England Telephone Company for replacement of an existing 800 PBX with a Bell System Dimension 400 telephone system at the Northeast Fisheries Center, Woods Hole, Massachusetts, in order to satisfy increased communications requirements.

Standard Form 145, Order for Telephone Service, dated June 20, 1977, was issued on June 30, 1977. IBT learned of the award and, after resort to the provisions of the Freedom of Information Act, not later than October 8, 1977, NOAA furnished IBT certain information, including the Justification for Non-Competitive Procurement, which formed the basis for IBT's contentions in the hand-delivered protest (received here on October 28, 1977). The protester initially alleged that: (1) NOAA awarded the contract without first obtaining a delegation of procurement

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authority from the General Services Administration (GSA); (2) NOAA did not obtain competition to the maximum extent possible; (3) the contract fails to insure that the specified system will meet the Government's requirements; (4) the contract includes no protection against exorbitant and unnecessary charges; and (5) NOAA's justification for a sole-source procurement cannot be supported by the facts. The fifth basis of protest is supported by GSA's evaluation of NOAA's Justification for Non-Competitive Procurement obtained from GSA pursuant to the provisions of the Freedom of Information Act. This information was obtained subsequent to IBT's protest here but the precise date is not a matter of record. IBT learned from internal GSA documents that GSA personnel in the Automated Data and Telecommunications Service concluded that NOAA's justification for sole-source award to the telephone company was, in GSA's view, insufficient.

NOAA contends that the above bases of protest should not be considered because they are untimely under our Bid Protest Procedures, which require protests based upon other than apparent solicitation improprieties to be filed here within 10 working days of notice of the basis of protest. 4 C.F.R. § 20.2 (b)(2) (1977). Since IBT knew of the above bases of protest more than 10 working days before filing the protest here, we must conclude that the protest is untimely and will not be considered.


Paul G. Dembling
General Counsel