

DOCUMENT RESUME

08132 - [C3408530]

**[Protest against Benchmark Procedures Was Untimely]. B-192927.
December 5, 1978. 4 pp.**

**Decision re: Comshare, Inc.; by Milton J. Soclar, General
Counsel.**

**Contact: Office of the General Counsel; Procurement Law II.
Organization Concerned: National Aeronautics and Space
Administration; Lyndon B. Johnson Space Center; General
Services Administration.**

**Authority: 4 C.F.R. 20. 52 Corp. Gen. 20. 52 Comp. Gen. 23.
B-186719 (1976). B-187444 (1976).**

**A company protested against benchmark procedures in a
procurement for services. The protest was dismissed as untimely
since it was filed more than 10 working days after the basis for
protest was apparent. (HTW)**

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

A. Pogany
Trace II
8530

FILE: B-192927

DATE: December 5, 1978

MATTER OF: Comshare, Inc.

DIGEST:

Protest of agency benchmark procedures in procurement of teleprocessing services is untimely when filed more than 10 working days after basis for protest was known or should have been known.

Comshare, Inc. (Comshare), protests the procedures employed by the National Aeronautics and Space Administration, Johnson Space Center (NASA), in the procurement of teleprocessing services under the General Services Administration (GSA) Teleprocessing Services Program (TSP).

Comshare and other companies have entered into Multiple Award Schedule Contracts (MASC) under GSA's TSP. As provided in Federal Property Management Regulations, Temporary Regulation E-47, August 3, 1976, as amended, TSP is the mandatory means by which Federal agencies acquire teleprocessing services from the private sector. MASC is one of the two alternative methods for acquiring the teleprocessing services.

The procedure to be followed by each agency for selecting a vendor for the teleprocessing services is set forth in detail in the MASC. Under paragraph D.9 (Basis for User Source Selection), the principal evaluation criterion is lowest system life cost. Paragraph D.10 (User Source Selection Considerations) provides for the running of any necessary benchmark programs or series of programs to determine which of the teleprocessing schedule contractors' services meet the user's needs at the lowest overall cost. Paragraph E.21 (Benchmark/Demonstrations) requires potential subscribers to give each contractor at least 20 days written notice of their intent to conduct benchmark tests. Generally, this notice must include a description of the applications intended to be implemented, a description of the benchmark problems, together with source language listings of the programs to be employed.

Programs used in the benchmark tests are to be those selected by the prospective subscriber as typifying his planned application. However, when approved by the prospective subscriber, the contractor is permitted to make changes in the selected benchmark programs that are essential to make them perform on its network or to take advantage of unique network features.

On March 22, 1978, NASA sent Comshare an invitation to participate in its TSP benchmark tests. The invitation stated that final selection would be based upon technical acceptance, successful completion of the benchmark tests, and evaluation of total system cost. In addition, the invitation contained an enclosure detailing NASA's proposed benchmark evaluation criteria. Comshare fully participated subsequently in the benchmark tests that were conducted by the agency. After completion of the benchmark tests and the necessary price evaluations, NASA notified Comshare on September 5, 1978, that selection of another contractor had been made. Comshare then filed this protest with our Office.

Specifically, Comshare alleges that the required 20 days notice in the invitation did not give sufficiently detailed information concerning the benchmark tests; that a 30 minute time period allotted in the benchmark evaluation criteria for familiarization of the entire test package, followed by three days of "pressure programming" defeated the intent of the clause allowing vendors to make changes to the programs that are essential to make them perform on the contractor's network or to take advantage of unique network features; and that NASA's procurement actions and benchmark procedures were otherwise inconsistent with the provisions of MASC.

We believe the protest to be untimely. With regard to the benchmark package of March 22, 1978, and the subsequent procurement practices employed, Comshare, as an active participant, knew or should have known the basis of its protest upon the receipt of the benchmark package detailing the proposed benchmark tests, or, at the very latest, during the actual conduct of those tests. In this regard, GAO's Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1978),

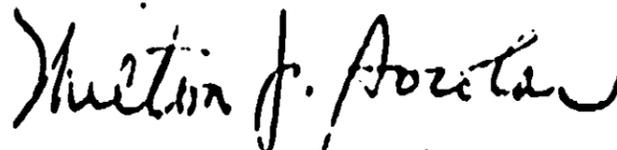
require that protests be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. Since Comshare did not complain of the alleged improprieties until after the entire procurement had been carried out and a selection made, its protest is untimely. Comshare argues, however, that since Temporary Regulation E-47 provides for preorder review by GSA before an order can be placed under MASC, it placed "heavy reliance upon GSA to police the selection process", and was not aware that GSA had failed to do so until it received notice that the order had been placed with the successful firm. We do not believe that this argument forms a basis for consideration of Comshare's protest on the merits. Our rules impose strict time limits and are strictly construed. We do not believe that a contractor should be allowed to fully participate without complaint through the entire procurement process with full knowledge of the alleged improprieties and then file a protest only after another firm is selected. Such delay in filing protests frustrates the intent of our Bid Protest Procedures of providing fair and timely consideration of bid protests so that a meaningful remedy can be provided in a timely manner.

Additionally, Comshare suggests that, even though its protest did not comply with our timeliness provisions, consideration should nevertheless be given to its protest on the merits. Our Procedures do permit consideration of untimely protests where good cause is shown or where issues significant to procurement practices or procedures are raised. 4 C.F.R. § 20.2 (c) (1978). The good cause exception generally refers to some compelling reason, beyond the protester's control, which prevented it from filing a timely protest, 52 Comp. Gen. 20, 23 (1972); Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256. The significant issue exception is limited to issues which are of widespread interest to the procurement community and is "exercised sparingly" so that the timeliness standards do not become meaningless. See Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445. We see nothing in the submission in the case to warrant invoking either exception.

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Based on the foregoing, we must regard Comshare's protest as untimely and not for consideration on the merits.



Milton J. Socolar
General Counsel