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DECISION

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

[Protest Against Army Procurement]

FILE: B-202100

DATE: March 25, 1981

MATTER OF: X-Tyal International Corp.

DIGEST:

Protest against protester's receipt of incomplete copy of solicitation only 2 working days before closing date and contracting agency's denial of protester's request for extension of closing date is dismissed as untimely filed where protester failed to protest closing date provision of solicitation before closing date and protest to GAO was filed more than 10 working days after protester's receipt of incomplete solicitation and agency's denial of request for extension of closing date.

X-Tyal International Corp. (X-Tyal) protests against the Department of the Army, Army Mobility Equipment Research & Development Command (Army), Fort Belvoir, Virginia, procurement of collapsible fabric water storage tanks under request for proposals (RFP) No. DAAK70-80-R-0403, contending that the Army's actions in furnishing X-Tyal an incomplete solicitation package 2 working days before the closing date for receipt of proposals and denying its request for an extension of the closing date precluded the protester from competing for the agency's requirements.

The RFP was issued on December 12, 1980, and synopsised in the Commerce Business Daily (CBD), on December 22, 1980. The original closing date for receipt of proposals, January 12, 1981, was extended by amendment to January 26, 1981. On January 12, 1981, X-Tyal requested a copy of the RFP from the Army, which it received on January 22, 1981. Upon receipt of the RFP, X-Tyal telephoned the Army and requested an extension of the closing date which the Army denied during the course of the conversation. Proposals were received, as scheduled, on January 26, 1981.

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By letter to the Army of January 27, 1981, X-Tyal protested the manner in which the agency conducted the procurement, asserting that its receipt of the RFP, from which the second page was omitted, 2 working days before the closing date and the agency's refusal to extend the closing date prevented X-Tyal, a small, labor surplus area business, from submitting an offer. We received X-Tyal's protest, on the same grounds, on February 6, 1981, and find it untimely filed in several respects.

Our Bid Protest Procedures require that protests based on alleged improprieties apparent in a solicitation be filed prior to the closing date for receipt of initial proposals and that protests on other bases be filed with the contracting agency or our Office within 10 working days after the basis of the protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 20.2 (1980).

Insofar as X-Tyal's protest pertains to the propriety of the amended closing date, it concerns a provision of the RFP which was apparent from the solicitation, requiring that a protest on this basis be filed either with the Army or our Office before January 26, 1980. X-Tyal's January 27 protest letter to the Army, however, postdates the closing date and could therefore not have been timely filed with the contracting agency, a prerequisite to our subsequent consideration of this ground of the protest now before us. 4 C.F.R. § 20.2(a) (1980).

We have held that publication of a procurement in the CBD constitutes constructive notice to all parties of the CBD announcement. Because the procurement was advertised in the December 22, 1980, issue of the CBD which stated the January 12, 1981, closing date, X-Tyal is deemed to have been on notice of both the procurement and the initial closing date within a reasonable time after the CBD publication. Houston Fearless 76, B-199935, September 18, 1980, 80-2 CPD 206; Delphi Industries, Inc., 58 Comp. Gen. 248 (1979), 79-1 CPD 67. In addition, we believe that X-Tyal had actual notice of the procurement by January 12, 1981,

when it asked for a copy of the RFP, and of the amended closing date on January 22, 1981, when it received a copy, albeit incomplete, of the RFP. A protest against its late receipt of an incomplete solicitation should therefore have been made within 10 working days of the protester's January 22 receipt of the RFP (by February 5, 1981) at the latest.

Even assuming that X-Tyal's January 22 request for an extension of the amended closing date was an oral protest to the Army, the contracting agency's denial of the request on that date constituted the initial agency action adverse to the protester's position that its late receipt of an incomplete copy of the RFP so close to the amended closing date did not allow adequate time to prepare a proposal. A subsequent protest to our Office, in order to be timely, should have been made within 10 working days of the Army's denial of the request (February 5, 1981).

The protest is therefore untimely filed and will not be considered on the merits.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel