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DECISION



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

FILE: B-212868

DATE: December 2, 1983

MATTER OF: Federal Marketing Services

DIGEST:

Protest against the propriety of contracting agency's decision to make sole-source award is untimely where filed approximately 5 months after the protester was informed that sole-source award would be made.

Federal Marketing Services (FMS) protests the National Aeronautics and Space Administration, Johnson Space Center's (NASA), sole-source award to International Business Machines, Inc. (IBM), under request for proposals (RFP) No. 9-BB53-33-3-53P, for a 1-year supply of accounting machine ribbons to be used with an IBM high-speed printer.

We dismiss the protest as untimely based on information the contracting agency furnished in its report of October 12, 1983, without providing the protester the opportunity to comment on the report. See 4 C.F.R. § 21.3(g) (48 Fed. Reg. 1932, 1983).

NASA reports that the sole-source award initially was synopsisized in the Commerce Business Daily on February 28, 1983. By letter dated March 1, 1983, FMS advised NASA that as representative of several manufacturers of ribbons, it intended to file a protest if the agency continued with the sole-source procurement. NASA advises that in response to the letter, on March 9, 1983, the contracting officer telephonically informed FMS that the IBM ribbon was the only ribbon to pass its sample test and consequently it intended to make an award to IBM. Also, NASA advises that FMS was subsequently furnished a copy of the RFP, which was issued on March 21, 1983, with a proposal due date of April 11, 1983. Award was made to IBM on June 24, 1983. FMS filed this protest with our Office on August 18, 1983.

Our Bid Protest Procedures require that protests be filed with the General Accounting Office or the contracting agency within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1983). Protests based upon

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alleged solicitation improprieties, for example, an announced sole-source award, must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(2) (1983). FMS should have known of NASA's decision to make a sole-source award to IBM, the basis of protest, from NASA's March 9 telephone call and subsequent issuance of the RFP. It is not clear from the record whether FMS received the solicitation in time to protest prior to the due dates for receipt of proposals. In any event, its protest concerning this matter filed approximately 5 months after it knew or should have known the basis of the protest is untimely. See WGBA Educational Foundation, B-211092, July 21, 1983, 83-2 CPD 105.

Accordingly, we dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel