

DECISION

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

FILE: B-214234 **DATE:** April 23, 1984
MATTER OF: Ruska Instrument Corporation

DIGEST:

1. Protest against failure of contracting agency to solicit protester for procurement is untimely, since solicitation was advertised in the Commerce Business Daily and protest was filed more than 3 months after the closing date for receipt of proposals.
2. Protest does not fall under the significant issue exception of timeliness rules, since it is not a matter of widespread interest to the procurement community and has been the subject of previous GAO decisions.

Ruska Instrument Corporation (Ruska) protests any award under Naval Regional Contracting Center (Long Beach) request for proposals No. NOO123-R-84-0044 (renumbered from NOO123-R-83-0832 after the end of the fiscal year) on the basis that it was not, and should have been, solicited for the procurement.

The closing date for the receipt of proposals was October 17, 1983. Ruska protested at the end of January 1984 to the contracting agency and to our Office.

Ruska contends that, as a major supplier of the item being procured and as a past supplier of the item to the Naval Regional Contracting Center, it should have been provided with a copy of the solicitation. Ruska maintains that its protest is timely notwithstanding the contention by the Department of the Navy that it is untimely. The Navy points out that the notice of the solicitation was published in the Commerce Business Daily and the protest was not filed within 10 working days of the closing date for receipt of proposals. Ruska believes that whether the publication constituted "constructive notice" of the solicitation is inapplicable because it protested promptly after receiving actual knowledge of the solicitation. If it is incorrect as to the timeliness of its protest, Ruska believes that, in

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view of paragraph § 2-205.4(b) of the Defense Acquisition Regulation (DAR) (1976 ed.), its protest should be considered on the basis that the issue raised presents a principle of widespread interest to the procurement community. The cited DAR paragraph provides, in part, that:

". . . Whenever the rotation method [of selecting bidders from the bidders mailing list] is employed, the successful bidder on the previous procurement for the same or similar items and those prospective bidders who have been added to the bidders mailing list since the last procurement shall be solicited"

We believe the protest is untimely and, therefore, not for consideration. Although Ruska may have protested promptly upon receiving actual knowledge of the solicitation, the earlier publication of a solicitation in the Commerce Business Daily constitutes constructive notice of the solicitation and its contents. Houston Fearless 76, B-199935, September 18, 1980, 80-2 CPD 206; Delphi Industries, Inc., 58 Comp. Gen. 248 (1979), 79-1 CPD 67. Therefore, Ruska's protest of its failure to receive the solicitation filed more than 3 months after the closing date is untimely. Dixie Business Machines, Inc., B-208968, February 7, 1983, 83-1 CPD 128.

We also believe that the Ruska request that, if its protest is untimely, the protest should be considered under the "significant issue" exception (4 C.F.R. § 21.2(c) (1983)) to our timeliness rules should not be granted. We stated in Sequoia Pacific Corporation, B-199583, January 7, 1981, 81-1 CPD 13, that:

"In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a matter of widespread interest or importance to the procurement community, see, e.g., Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Wyatt Lumber Company, B-196785, February 7, 1980, 80-1 CPD 108; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159."

This exception must be strictly construed and sparingly used to prevent our timeliness rules from being rendered meaningless. The protest here does not fall within the exception. The failure of a firm to receive a solicitation has been the subject of previous decisions by our Office. See Xtra Helpers, B-183744, August 8, 1975, 75-2 CPD 99; Ontario Knife Company, B-205142, February 10, 1982, 82-1 CPD 125.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel