

**DECISION**

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

**FILE:** B-216442                      **DATE:** January 23, 1985  
**MATTER OF:** Cullinet Software, Inc.

**DIGEST:**

Protest that was not filed within 10 working days after basis of protest was known or should have been known is dismissed.

Cullinet Software, Inc. protests a decision of Federal Prison Industries, Inc. (Department of Justice) to reject its proposal under solicitation P1-0001-4-SOL for software, and to fill its need by placing an order with Management Science America, Inc. (MSA) under a General Services Administration ADP schedule contract. The proposal was rejected because the agency concluded that Cullinet's software did not conform to a requirement for software written in the COBOL language. Cullinet acknowledges that its online capabilities and some reports are not written in COBOL but contends that the agency's decision to place an order with MSA (which uses COBOL) was based on an inadequate understanding of the protester's product and on unspecified political considerations.

We dismiss the protest because the record shows that Cullinet knew by mid-August that the agency had rejected its proposal and knew or should have known by mid-August that the agency intended to acquire the software from MSA. On August 9, the agency published a notice in the Commerce Business Daily (CBD) stating that it planned to order the software from MSA within 30 days. It appears that Cullinet knew of the announcement because on September 7 the agency received a letter from Cullinet requesting an opportunity to discuss the proposed MSA order. In any event, publication in the CBD is constructive notice of the procurement action publicized. See Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60. Cullinet filed its protest with our Office on September 18.

Our Bid Protest Procedures require that protests must be filed within 10 working days after the basis of protest

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is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). Since Cullinet knew or should have known of the agency's action by mid-August, its protest is dismissed.

*Harry R. Van Cleve*  
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General Counsel