

1 hr review
32070

DECISION



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

FILE: B-219363

DATE: August 27, 1985

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

1. Protest of sole-source award of contract filed more than 10 days after publication of Commerce Business Daily notice of award is untimely.
2. Untimely protest of sole-source procurement does not present significant issue within meaning of Bid Protest Regulations since GAO has issued numerous decisions setting forth basic principles governing such procurements.

Julie Research Laboratories, Inc. protests the sole-source award of a contract for meter calibrators to John Fluke Manufacturing Co. Inc. under request for proposals (RFP) No. FD2050-84-R-2104 issued by the Air Force. Julie contends that it and other potential sources should have been allowed to compete. We dismiss the protest as untimely.

The Air Force reports that on May 16, 1984, it synopsized this requirement in the Commerce Business Daily (CBD). The Air Force received no responses to the synopsis and issued the solicitation to Fluke on May 23 with a June 22 closing date. The agency made award to Fluke on February 21, 1985. Notice of the award was published in the CBD on April 2. Julie's protest was filed on May 1.¹

¹/ We did not actually receive the protest until June 5. Since, however, circumstances indicate that the protest actually may have been delivered to us on May 1 and misplaced, we are considering the protest as filed on May 1. See Julie Research Laboratories, Inc., B-219363, et al., July 3, 1985, 85-2 CPD ¶ _____.

Julie's protest is untimely even if we construe the facts most favorably to the protester and consider the notice of award as the measuring date.^{2/}

Our Bid Protest Regulations require that protests be filed with our Office within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). Protesters generally are charged with constructive notice of a synopsis published in the CBD. Burgmaster Division, Houdaille Industries, Inc., B-211636, May 12, 1983, 83-1 CPD ¶ 505; Del Norte Technology, Inc., B-182318, Jan. 27, 1975, 75-1 CPD ¶ 53. Julie maintains, without offering any supporting evidence, that its protest should nevertheless be considered timely because it was filed within 10 days of its receipt of a copy of the CBD in the mail. While we permit "a few days after the date of publication" for a protester to receive its copy of the CBD, see Delphi Industries, Inc., 58 Comp. Gen. 248 (1979), 79-1 CPD ¶ 67, Julie filed its protest a month after the publication date. Under the circumstances, we view the protest as clearly untimely.

Julie also complains that it is an undue burden to require a small business such as it to search the CBD for procurement information. The protester maintains that "each day approximately 1,000 synopses appear in CBD, 6,000 each week and 25,000 each month."

^{2/} Under most circumstances, protests such as this one concerning the sole-source nature of a procurement are considered protests based upon alleged solicitation improprieties and must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60. Here, however, the Air Force has not provided us with a copy of the May 16 CBD synopsis so that we are unable to determine whether it contained sufficient information to constitute constructive notice of the solicitation. See Detroit Broach and Machine--Reconsideration, B-213643.2, July 12, 1984, 84-2 CPD ¶ 43. We do have a copy of the April 2 award notice.

Julie exaggerates the effort required to review the CBD, which is broken down by subject categories so that firms need only review those categories of services or supplies which they are capable of providing. Julie, for instance, states in its protest that it makes items in Category 66, "Instruments and Laboratory Equipment." Julie can stay abreast of all procurement actions for Category 66 items by reviewing only this category, which on a typical day contains less than 75 notices.^{3/}

Julie argues that even if its protest is untimely it should be considered under the exception in our regulations which permits us to consider untimely protests for "good cause" shown. 4 C.F.R. § 21.2(c).

The good cause exception in our regulations is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of a protest. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281. Julie's only explanation relating to the late filing is that considered earlier regarding Julie's alleged late receipt of its CBD. Further, it appears that Julie feels that its protest raises a significant issue and that we should consider its untimely protest under the regulatory exception which permits us to consider untimely protests that raise issues significant to the procurement system. 4 C.F.R. § 21.2(c).

The significant issue exception is used where the subject matter of the protest evidences a matter of widespread interest or importance to the procurement community, and

^{3/} We note that the Congress, in the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, title IV, 98 Stat. 3066, 3082 greatly increased the role and importance of the CBD notice in the procurement system, and accordingly anticipates that those interested in federal procurements will make appropriate use of the CBD. See 15 U.S.C.A. § 637 (West Supp. 1985) and 41 U.S.C.A. § 416 (West Supp. 1985).

the matter has not been considered on the merits in previous decisions. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 CPD ¶ 55.

This protest does not fall within the exception, which we construe strictly to prevent our timeliness rules from becoming meaningless. The issue of whether a particular purchase should have been made by competitive procurement rather than through a sole-source award is not of sufficient interest to the community to invoke that exception. Detroit Broach and Machine, B-213643, supra; Kemp Industries, Inc., B-206653, Mar. 19, 1982, 82-1 CPD ¶ 262. We have numerous decisions setting forth the basic principles governing sole-source procurements under the law applicable to this procurement. See Amray, Inc., B-209186, June 30, 1983, 83-2 CPD ¶ 45; Taylor Associates, B-206070.3, Apr. 22, 1983, 83-1 CPD ¶ 431. Thus, while we recognize the importance of the matter to the protester, we do not think the propriety of this sole-source procurement is a significant issue under our Bid Protest Regulations.

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel