

32146

DECISION



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

FILE: B-219838; B-219853 **DATE:** September 4, 1985

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

Protests alleging that sole-source contract awards were improper are dismissed as untimely where filed approximately 6 months after date of publication in Commerce Business Daily (CBD) of notice that items were being purchased sole-source and of closing date for receipt of offerors since CBD announcement placed protester on notice of the bases for its protests prior to the closing date.

Julie Research Laboratories, Inc. (JRL), protests the sole-source award of Air Force contract No. F41608-85-F-0087 and Navy contract No. N00104-85-C-3243 to John Fluke Manufacturing Company, and Electro Scientific Industries, Inc., respectively. The contracts are for the delivery of 15 reference dividers and two resistance measuring devices. JRL contends that these sole-source awards were improper because other sources of supply, including JRL, were available but were denied the opportunity to compete.

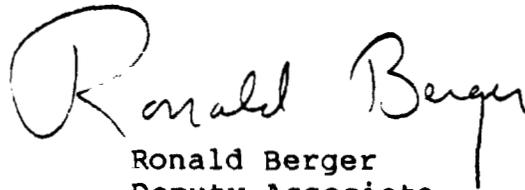
For the reasons stated below, the protests are dismissed.

JRL filed its protest of the award to Electro Scientific on August 8, 1985, and on August 9, we received JRL's protest of the award to John Fluke. The Air Force has advised that notice of the sole-source negotiations for each contract and the closing dates for receipt of offers appeared in the Commerce Business Daily (CBD) on January 19, 1985, and March 8, 1985, respectively. In addition, the Air Force indicates that the award to Electro Scientific was synopsisized on July 18, and that the award to John Fluke was synopsisized on July 20.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), require that protests based upon alleged solicitation improprieties which are apparent before the closing date for receipt of offers must be filed before that

date. We have held that publication of a procurement in the CBD constitutes constructive notice of the solicitation and its contents. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55. Accordingly, JRL is charged with notice of the Air Force's decision to purchase these items on a sole-source basis. The closing date for receipt of quotations for the resistance measuring devices was February 11, and the closing date for the receipt of proposals for the reference dividers was April 3. Thus, JRL's protests concerning these matters filed approximately 6 months after the closing date for receipt of offers for these items are untimely.

Even if there were some basis for JRL to assert that it was not placed on at least constructive notice of the intended sole-source awards, the firm would still be untimely since the Air Force's publication in the CBD on July 18 and July 20 of the respective awards put JRL on notice of the actual contract awards and JRL's protests were not filed within 10 working days of these dates, as also required by the Bid Protest Regulations. Accordingly, the protests are untimely and will not be considered. Dresser Industries, B-212937, Sept. 21, 1983, 83-2 C.P.D. ¶ 355.



Ronald Berger
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General Counsel