

DECISION

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

FILE:

B-221684

DATE: January 28, 1986**MATTER OF:**

Tobe Deutschmann Labs, Inc.

DIGEST:

Protest that agency improperly failed to send protester a solicitation is dismissed as untimely when not filed within 10 working days after the closing date for the receipt of proposals as published in the Commerce Business Daily.

Tobe Deutschmann Labs, Inc. (TDL), protests any contract award under Department of the Navy request for proposals (RFP) No. N00104-85-R-VY49. We dismiss the protest as untimely.

The Navy has informed our Office that the RFP was synopsisized in the Commerce Business Daily (CBD) on July 26, 1985, and that the CBD indicated initial proposals were due on September 5. The closing date subsequently was extended to September 19. On December 17, TDL orally protested to the Navy that it never received a copy of the solicitation. The Navy denied the protest by letter dated January 17, 1986. We received TDL's protest on January 21.

For a protest to our Office to be timely, where it involves other than specification improprieties and follows the contracting agency's denial of a protest at that level, the initial protest had to have been filed within 10 working days after the protester knew or should have known the basis for it. See section 21.2(a)(3) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Here, even though the closing date ultimately was extended, since the CBD announcement listed September 5 as the closing date for the receipt of proposals, TDL should have been aware that in order to compete, it would need a copy of the solicitation by that date. In this respect, publication in the CBD constitutes constructive notice of the procurement action publicized. See CullinetSoftware, Inc., B-216442, Jan. 3, 1985, 85-1 C.P.D. ¶ 89. When TDL did not receive the solicitation by September 5, it was on notice of the basis for its protest and, thus, should have raised the issue with

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the Navy (or this Office) within 10 days thereafter. BOW Industries, Inc., B-216512, Apr. 17, 1985, 85-1 C.P.D. ¶ 436. TDL did not do so, however, and its protest to our Office therefore will not be considered.



Robert M. Strong
Deputy Associate General Counsel