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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aluminum Company of America

File: B-227139

Date: July 21, 1987

DIGEST

1. Publication of a procurement in the Commerce Business Daily (CBD) constitutes constructive notice to potential offerors of the solicitation and its contents. Therefore, protest based on agency's failure to send protester a copy of the solicitation, which was publicized in the CBD, is untimely when it is filed more than 10 working days after the closing date for receipt of proposals.

2. Allegation that patent infringement may result from performance under the awarded contract is not a proper basis of protest to the General Accounting Office since the exclusive remedy for patent infringement by a government contractor is a suit against the government in the United States Claims Court.

DECISION

Aluminum Company of America (Alcoa) protests any contract award under request for proposals (RFP) No. DAAD05-87-R-8063, issued by the Department of the Army, Aberdeen Proving Ground, Maryland, for aluminum armor plates. Alcoa complains that it was improperly deprived of the opportunity to submit a proposal because it did not receive a copy of the solicitation. Alcoa also maintains that performance under the awarded contract would infringe Alcoa's patent and give rise to needless claims and litigation.

We dismiss the protest.

The record shows that the Army, on November 3, 1986, published a synopsis of the procurement in the Commerce Business Daily (CBD). In this announcement, the Army specifically identified the solicitation document and listed the date for issuance of the solicitation as on or about November 14, 1986. The solicitation was actually issued on February 17, 1987, and three proposals were received by the amended closing date of March 25, 1987. Alcoa apparently first became aware of the existence of the solicitation on May 1, 1987. Alcoa then filed an agency-level protest against its exclusion on May 5, 1987, which was denied by

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the contracting officer on May 14, 1987. This protest followed on May 18, 1987.

Alcoa advances several arguments as to why it should have been permitted to submit a proposal. Alcoa states that it is a known producer of armor plates; that it had provided data to assist the government in developing the specifications that were used in this solicitation; and that, because of its close involvement in developing military standards, it had understood and expected to be solicited.

We find the protest to be untimely. We have held that publication of a procurement in the CBD constitutes constructive notice to potential offerors of the solicitation and its contents. Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60. Alcoa, upon publication of the synopsis in November 1986, knew or should have known of the existence of the procurement and the intended solicitation issuance date of November 14, 1986. See Neotronics, B-223603, Sept. 22, 1986, 86-2 CPD ¶ 441. Further, we have also held that a firm which does not receive a copy of the solicitation shortly after the announced date of issuance has a duty to contact the agency and make further inquiry. Id. Here, Alcoa did nothing until May 1987, 6 months after publication of the synopsis. Since Alcoa is constructively charged with notice of the entire contents of the solicitation, including the amended closing date, we think it should have protested at the latest within 10 working days after the closing date of March 25, 1987. See Neotronics, B-223603, supra. Since it did not do so, its protest is untimely and will not be considered by our Office.

Finally, with respect to Alcoa's contention that patent infringement may result from performance under the awarded contract, this is not a proper basis of protest to our Office. The exclusive remedy for patent infringement by a government contractor is a suit against the government in the United States Claims Court. See Industrial Co-Generation Systems, B-216511, Oct. 9, 1984, 84-2 CPD ¶ 396.

We dismiss the protest.


Ronald Berger
Deputy Associate
General Counsel