



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Amray, Inc.

**File:** B-248109

**Date:** April 13, 1992

Kenneth R. Benoit for the protester.  
Paul Brundage, National Aeronautics and Space Administration, for the agency.  
Charles W. Morrow, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where Commerce Business Daily (CBD) notice announcing procuring agency's intent to make a sole-source award offers other potential source's an opportunity to compete by requiring potential sources to identify their interest and capabilities within 15 days of the CBD notice, a potential source must first properly respond to the CBD notice and receive a negative agency response before filing a protest challenging the sole-source decision; protest of the sole-source announced in CBD is dismissed as untimely where the protester did not properly respond to the CBD notice.

## DECISION

Amray, Inc. protests the award of a sole-source contract to Leica-USA, Incorporated by the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center, for a scanning electron microscope. Amray objects to the sole-source because it allegedly is capable of meeting NASA's requirements.

We dismiss the protest.

A synopsis of the proposed sole-source to Leica-USA was published in the February 13, 1992, edition of the Commerce Business Daily (CBD). The notice advised that NASA intended to procure a Cambridge Instruments Stereoscan 360 Computer Controlled Digital Scanning Electron Microscope with a fully integrated Energy Dispersive Spectrometer, and that the microscope must be capable of providing, among other things, live scan 3-Dimensional (3-D) imaging. In addition to

[ Protest of Nike Contract Award for Scanning E. from Amray ]

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identifying the basis for the sole source, the CBD notice stated the following:

"Any other persons desiring consideration are required to fully identify their interest and capabilities within 15 days of the date of publication of this synopsis . . . . Since no solicitation document exists, request for such documents without the accompanying information requested herein will be nonresponsive and shall not be given further consideration."

By letter dated February 18, Amray requested a copy of the solicitation, without otherwise identifying its specific capabilities. In response, NASA informed Amray that the CBD synopsis contained specific requirements, which were required to be met before NASA could determine the qualifications of another source. Amray did not submit any additional information to NASA or otherwise comply with the CBD notice's requirements within the 15-day time period allotted for considering additional sources. Amray contacted NASA again by letter dated March 4, in which Amray advised NASA that it could meet or exceed the salient characteristics of the Leica-USA electron microscope and that if NASA proceeded with the sole source the matter would be protested. Amray did not provide documentation that it could meet NASA's requirements. On March 18, NASA informed Amray that it intended to make the sole source to Leica because NASA's market survey, which included Amray and the responses to the CBD notice, established that Leica-USA was the only company capable of meeting NASA's requirements for live scan 3-D stereo imaging. NASA awarded the contract to Leica-USA on March 19. On March 26, Amray filed this protest.

We require a protester to submit a timely expression of interest responding to a CBD notice and to receive a negative agency response as a prerequisite to filing a protest challenging an agency's sole-source decision. This procedure gives the agency an opportunity to reconsider its sole-source decision in light of a serious offeror's preliminary proposal, while limiting challenges to the agency's sole-source decision to diligent potential offerors. DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514.

Although Amray requested a copy of the solicitation on February 18, Amray's request did not conform to the requirements that NASA established in the CBD notice, which required interested sources to fully identify their interest

and capabilities in order to be considered responsive to the notice. Amray did not timely express interest in the sole-source in accordance with the terms of the notice and protested after the closing date for expressing interest to the CBD notice. Under the circumstances, we regard Amray's protest as untimely under our Bid Protest Regulations. See Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490.

The protest is dismissed.

*James A. Spangenberg*

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