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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allerion Inc.

File: B-256986

Date: April 28, 1994

Chet Szymanski for the protester.
Tenley A. Carp, Esq., General Services Administration, for
the agency.
Henry J. Gerczycki, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

A protest of a sole source award is untimely under the Bid Protest Regulations where the protester fails to timely respond to the agency's notice of an intended sole source contract action published in the Commerce Business Daily (CBD) and protests the agency's alleged misclassification of the CBD notice more than 10 working days after it knew, or should have known, of the alleged misclassification.

DECISION

Allerion Inc. protests the extension of contract No. GS-00C-50312 with Honeywell Federal Systems, Inc. (HFSI) by the General Services Administration (GSA) for hardware and software maintenance and relocation services for BULL HM ADP equipment and software.

We dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, of the basis for protest.

On December 27, 1993, GSA published a synopsis in the Commerce Business Daily (CBD) announcing the agency's intent to modify an existing contract by extending the performance for 6 months with an option for an additional year. The CBD synopsis stated that HFSI was the only responsible source able to satisfy the agency's requirement and included Note 22, giving potential sources 45 days to submit expressions of interest to GSA showing their ability to meet the agency's stated requirements. Although at least one company, Federal Support Group, Inc., responded to the CBD synopsis to GSA within the required 45-day period, Allerion did not contact the agency.

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On March 23, 1994, Allerion submitted to Federal Support Group a statement of its capability to perform the services under the contract which referenced the December 27 CBD synopsis. On the same date, Federal Support Group sent Allerion's capability statement to GSA via facsimile transmission.

On March 31, GSA extended the contract of HFSI. On April 11, Allerion protested the contract extension alleging that it was an improper sole source award, that the contract requirements were improperly bundled, and that GSA had published the synopsis under an incorrect classification category.¹

A protester must respond to CBD notices with a timely expression of interest in fulfilling the potential sole source requirement and must receive a negative agency response as a prerequisite to filing a protest challenging an agency's sole source decision. Norden Sys., Inc., B-245684, Jan. 7, 1992, 92-1 CPD ¶ 32. 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. Fraser-Volpe Corp., B-240499 et al., Nov. 14, 1990, 90-2 CPD ¶ 397. Although an agency's misclassification of a CBD notice may provide potential offerors with a protest basis, even if they did not submit a timely expression of interest in response to the misclassified CBD notice, see Frank Thatcher Assocs., Inc., 67 Comp. Gen. 77 (1987), 87-2 CPD ¶ 480, such a protest must be filed within 10 working days of when the protester first has knowledge of the misclassified CBD notice in order to be timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1993). Washington Patrol Serv., Inc., B-217488, Aug. 16, 1985, 85-2 CPD ¶ 178.

Here, since GSA's synopsis was published in the CBD on December 27, 1993, and Allerion did not submit a response until March 23, 1994, which is well beyond the 45-day period for submission of such responses, Allerion's protest of GSA's sole source contract action is untimely. See Amtech Sys. Corp., B-252414, June 29, 1993, 93-1 CPD ¶ 500. Allerion may not rely on Federal Support Group's apparently timely expression of interest to GSA to establish its eligibility to protest the sole source award, since Allerion apparently was to be a potential subcontractor to Federal

¹The synopsis was classified under "General Purpose ADP Equipment." Since the agency's requirement is for maintenance and relocation services, Allerion asserts that the synopsis should have been published under a "services" category.

Support Group, through which its qualifications were submitted after the 45-day period had expired, and is thus not an interested party under our Regulations, 4 C.F.R. § 21.3(m)(10).

While Allerion alleges that the CBD announcement was misclassified, its March 23 letter references the CBD synopsis, which shows that Allerion knew or should have known of the alleged misclassification of the CBD synopsis at least as early as March 23. Since Allerion did not protest this issue to our Office until April 11, or 13 working days later, the protest is untimely.² See 4 C.F.R. § 21.2(a)(2); Washington Patrol Serv., Inc., supra.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel

²To the extent that Allerion alleges further defects apparent on the face of the CBD announcement, e.g., the bundling of the contract requirements, the protest is also untimely for the same reason.