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DECISION



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

Request for Reconsideration

FILE: B-201553

DATE: March 26, 1981

MATTER OF: Lutz Superdyne, Inc. -- Reconsideration

CN 800940

DIGEST:

Even assuming arguendo that date of publication of solicitation synopsis in Commerce Business Daily should not have been used to determine timeliness of protest because notice was allegedly inadequate, protest based on agency's failure to send protester solicitation in timely manner and protester's belief upon receipt of solicitation that it was defective was not timely filed with GAO and is not for consideration on merits where protest was filed more than 10 days after bases of protest were actually known.

AGC 0200

Lutz Superdyne, Inc. (Lutz), requests that we reconsider our decision in Lutz Superdyne, Inc., B-201553, February 20, 1981, 80-1 CPD ____. In that decision, we dismissed Lutz' protest as untimely. First, we held that Lutz' protest against the failure to receive a solicitation was untimely under our Bid Protest Procedures because it was filed more than 10 working days after the closing date for receipt of proposals which date had been stated in the notice of procurement in the Commerce Business Daily (CBD). CBD publication constitutes constructive notice of the solicitation closing date.

Second, we found that Lutz' argument that the solicitation was defective was untimely since it constituted a protest based upon alleged improprieties apparent in the solicitation which had not been filed prior to the closing date for receipt of proposals. Again, publication in the CBD provided constructive notice to all parties of the solicitation and its contents.

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Lutz states that it should not be charged with notice, constructive or otherwise, of the solicitation and its contents because the notice was inadequate to inform a reasonable person of the corkboard solicitation. Lutz notes that the CBD notice advised of a procurement for signs, not corkboards, and that, in the past, the corkboards had been solicited under a bulletin board category. Lutz further asserts that, in an effort to discover if and when corkboards were to be solicited, it wrote and telephoned the General Services Administration (GSA) and other Government contacts to obtain actual notice of the procurement. Lutz states it did not discover the solicitation until after bid opening. Lutz contends it could not have possibly protested the solicitation defects or failure to receive the solicitation until it had actual notice of the solicitation. Lutz states it protested within 10 working days after the protest basis was known or could have been known. We disagree.

We have reviewed Lutz' submission as it relates to the timeliness of the protest. Even if we assume that the date of the publication of the CBD notice should not have been used to determine the timeliness of the protest, in our view Lutz still failed to file a timely protest because it did not file within 10 days of when Lutz actually knew its bases of protest.

With respect to the protest of GSA's failure to send Lutz a solicitation in a timely manner, Lutz' initial submission indicated that on December 5, 1980, it was first advised by GSA that the solicitation had been issued, and that bid opening had occurred on November 18, 1980. However, Lutz' letter of protest was not filed (received in our Office) until December 29, 1980, 16 working days later, and is clearly untimely under our Bid Protest Procedures. 4 C.F.R. § 20.2(a) (1980).

With regard to Lutz' allegation of defects in the solicitation, we note that Lutz' correspondence shows it received a copy of the allegedly defective solicitation prior to December 10, 1980. Although Lutz had no opportunity to protest prior to bid opening, its protest to our Office on December 29, 1980, was more than 10 working days after receiving the solicitation, and, therefore, untimely under our Bid Protest Procedures.

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Accordingly, we affirm our prior decision dismissing the protest.

A handwritten signature in black ink, reading "Milton J. Acosta". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States