

DECISION



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

51043

FILE: B-184564

DATE: September 24, 1975

MATTER OF: MB Associates

97423

DIGEST:

1. Protest concerning noncompetitive, sole-source procurement must be filed in GAO prior to closing date for receipt of initial proposal or if basis for protest not known until after closing date, filing must be within 10 working days after the basis is known or should have been known to be timely.
2. Untimely protest which raises issue of propriety of sole-source procurement practice of particular procuring office will not be considered under section 20.2(c) of our Bid Protest Procedures (40 C.F.R. § 17979 (1975) since matter does not involve a principle of widespread procurement interest.

MB Associates (MBA) has requested reconsideration of our decision of August 12, 1975, which declined to consider the merits of its protest as it was determined not to be timely filed in our Office.

The basis for protest was the award to Reynolds Metal Company (Reynolds) of contract No. F09603-75-C-4800 by Robins Air Force Base on a noncompetitive, sole-source basis. Our August 12 decision held that MBA was on constructive notice for the basis of protest from the synopsis in the Commerce Business Daily (CBD) on April 23, 1975, of the proposed procurement. Since the basis for protest was apparent prior to the closing date for receipt of initial proposals (May 21, 1975), we found the protest had to have been filed prior to such closing date to be timely. 40 Fed. Reg. 17979 (1975). Therefore, since MBA did not file its protest until July 21, 1975, well after award of the contract (awarded June 25, 1975), it was determined to be untimely.

MBA contends that because of the confusing solicitation procedures followed by Robins AFB constructive notice of the basis for protest was not received until the announcement of award of contract No. F09603-75-C-4800 to Reynolds in the CBD on July 8, 1975. Therefore, it is argued, MBA's protest filed on July 21, 1975, should be considered timely. Alternatively, MBA submits that its protest raises issues significant to procurement practices or procedures so as to warrant waiver of the normal time requirements for filing.

The facts are not in dispute. On April 23, 1975, solicitation No. F09603-75-R-4689 was synopsisized in the CBD on a sole-source basis for subcontract purposes. The closing date for receipt of proposals was May 21, 1975, and covered 6,156 boxes of RR161 B/AL Chaff. On June 11, 1975, award of contract No. F09603-75-C-4300 to Reynolds for 10,000 boxes of Chaff was published in the CBD. The synopsis of award did not list any solicitation number and stated award had been made on May 15, 1975, with no RFP. On July 8, 1975, award to Reynolds of contract No. F09603-75-C-4800 was synopsisized in the CBD which listed that the quantity of 6,154 boxes of RR161 C/AL Chaff had been awarded pursuant to solicitation No. F09603-75-R-4689.

MBA alleges that because contract No. F09603-75-C-4300 was awarded on a sole-source basis without synopsisizing the procurement in the CBD prior to award, it justifiably assumed that the June 11 synopsis of award was made pursuant to the April 23 solicitation. Therefore, MBA contends that it did not become aware that Robins AFB had made two sole-source procurements to Reynolds until synopsis of award of contract No. F09603-75-C-4800 on July 8. While MBA did not agree with the first award to Reynolds on a sole-source basis, it chose not to protest a single procurement action. However, when MBA realized that two awards had been made to Reynolds, both on a sole-source basis, it decided to protest the second award, i.e., award of contract No. F09603-75-C-4800.

We find the argument of MBA concerning the confusion of whether the award synopsisized on June 11 was made pursuant to the solicitation of April 23 unconvincing. A reading of the synopses of April 23 and June 11 clearly indicates that the award of contract No. F09603-75-C-4300 was not made pursuant to the solicitation of April 23, 1975. First, the June 11 synopsis stated the contract was awarded on May 15, while the April 23 solicitation indicated proposals were not due until May 21, 1975. Second, the April 23 synopsis contained RFP No. F09603-75-R-4689, however, the June 11 synopsis clearly showed that no RFP

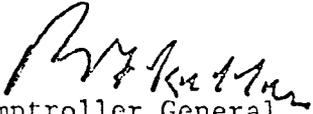
had been issued for the procurement in question. Additionally, the proposed quantity first announced on April 23 was 6,156 boxes of RR161 B/AL Chaff, while the award on June 11 was for 10,000 boxes--well over a 50-percent increase from the quantity published on April 23, 1975. From these facts we must conclude that MBA received notice of the second sole-source procurement to Reynolds when award of contract No. F09603-75-C-4300 was synopsized on June 11, 1975, in the CBD. See Del Norte Technology, Inc., B-182318, 75-1 CPD 53 (January 27, 1975). Since MBA did not file its protest within 10 working days from the date it received notice of the basis for protest (received at the GAO on July 21, 1975), it is untimely.

Alternatively, MBA requests reconsideration under section 20.2(c) of our Bid Protest Procedures which provides:

"(c) The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely." 40 Fed. Reg. 17979 (1975).

As stated above, we do not feel that the confusion alleged by MBA over the synopses in the CBD resulted from anything other than its own failure to carefully read the synopses and cannot conclude that good cause otherwise exists for the delay in protesting to this Office the agency's award of two sole-source procurements for Chaff. See 52 Comp. Gen. 20, 23 (1972). With respect to the contention that the protest raises issues significant to procurement practices on procedures, we have held that this exception to the timeliness rule has reference to the presence of a principle of widespread procurement interest. 52 Comp. Gen. 20, supra. MBA submits that its protest raises significant issues concerning the procurement practices of Robins AFB with respect to sole-source contracting. In our opinion these issues do not contain the requisite level of widespread procurement interest and are not significant.

Accordingly, our decision of August 12, 1975, is affirmed.

  
Deputy Comptroller General  
of the United States