

**DOCUMENT RESUME**

03629 - [A2653819]

[Protest against Failure of Agency to Solicit Company Was Untimely]. E-189962. September 20, 1977. 2 pp.

Decision re: Bureau of National Affairs, Inc.; by Paul G. Deamling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Information Planning Associates, Inc.;  
Occupational Safety and Health Review Commission.

Authority: 4 C.F.R. 20.2(b)(2). B-182636 (1975). B-187476 (1976). E-185994 (1976). B-185994 (1976). B-185684 (1976).

A protester implied that it may have been intentionally omitted from the bidders' list and maintained that the statement of work did not give adequate recognition to work it had already performed. The protest was untimely since it was filed more than 10 days after bid opening date. Publicizing of procurement indicated that the protester was not intentionally omitted from solicitation. (HTW)

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# DECISION



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

**FILE: B-189962**

**DATE: September 20, 1977**

**MATTER OF: The Bureau of National Affairs, Inc.**

## DIGEST:

1. Protest against failure of agency to solicit protester is untimely under 4 C.F.R. § 20.2(b)(2) (1977), having been filed more than 10 days after bid opening date, which was included in publication of procurement in Commerce Business Daily since publication constitutes notice to all parties.
2. Publicizing procurement in Commerce Business Daily strongly indicates protester was not intentionally omitted from bidders mailing list for solicitation.
3. Disagreement with portions of statement of work filed after bid opening is untimely under 4 C.F.R. § 20.2(b)(1) (1977), which requires that protests based upon alleged improprieties apparent from face of solicitation must be protested prior to bid opening, where protester was on constructive notice of solicitation and its contents.

By letter dated August 19, 1977, The Bureau of National Affairs, Inc. (BNA), protested the award of a contract to Information Planning Associates, Inc., under solicitation OSH-771-6-30-77, issued by the Occupational Safety & Health Review Commission. BNA expresses concern that it was not solicited to compete and implies that it may have been intentionally omitted from the bidders list. Also, BNA maintains that the statement of work in the solicitation did not give adequate recognition to existing work already performed by BNA.

Section 20.2(b)(2) of our Bid Protest Procedures (4 C.F.R. part 20 (1977)) requires protests, other than those based upon alleged improprieties apparent in a solicitation, to be filed within 10 days after the basis for protest was known or should have been known, whichever is earlier. The June 30, 1977, bid opening was publicized in the Commerce Business Daily (CBD) on May 16, 1977. We have held that protesters are charged with constructive knowledge of the contents of the CBD announcements.

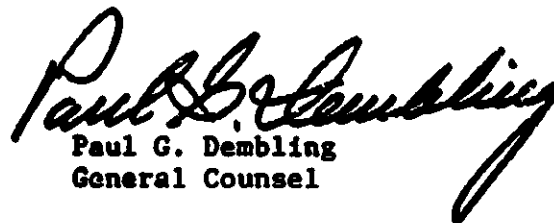
B-189962

Non-Linear Systems Inc., B-182636, February 12, 1975, 75-1 CPD 91. Thus, BNA was constructively aware of the basis for its protest--the agency's failure to solicit BNA--at the latest on June 30, when bids were opened. Since BNA's protest was filed more than 10 days after that date, it is untimely and not for consideration on the merits. See Southeastern Carbonics, Inc., B-187476, November 12, 1976, 76-2 CPD 406; Capitol Oil Company, B-185994, June 28, 1976, 76-1 CPD 415.

Moreover, the publication in the CBD, being constructive knowledge to the public, strongly indicates that BNA's failure to receive the solicitation was not intentional, Valley Construction Company, B-185684, April 19, 1976, 76-1 CPD 266, and there is no evidence of record to support such inference.

As for BNA's disagreement with the statement of work, section 20.2(b)(1) of our Procedures requires that protests against alleged improprieties apparent from the face of a solicitation be filed prior to bid opening in order to be timely. Since BNA was on constructive notice of the solicitation and its contents, its protest, received after bid opening, is also untimely.

Therefore, the protest is untimely and will not be considered on its merits.

  
Paul G. Dembling  
General Counsel