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DECISION



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

FILE: B-201553

DATE: February 20, 1981

MATTER OF: Lutz Superdyne, Inc.

DIGEST:

1. [Protest against failure to receive solicitation] is untimely under GAO Bid Protest Procedures since protest was filed more than 10 working days after closing date for receipt of proposals, which had been stated in notice of procurement in Commerce Business Daily and constituted constructive notice thereof.
2. Protest based upon alleged improprieties apparent in solicitation not filed prior to closing date for receipt of proposals is untimely since notice in Commerce Business Daily is constructive notice to all parties of solicitation and its contents, and notice stated closing date.

Lutz Superdyne, Inc. (Lutz), protests any award under solicitation 7CF-51983/L5/7FC, for bulletin corkboards issued by the General Services Administration (GSA). The protest was received in our Office on December 29, 1980.

Lutz states that the solicitation was issued in October 1980, but that Lutz did not learn of the solicitation until after the closing date for receipt of proposals on November 19, 1980, although it had written letters requesting that it be apprised of future corkboard solicitations subsequent to the lifting of a moratorium on GSA's purchase of corkboards. Lutz asserts it was therefore improperly denied an opportunity to compete. Lutz further argues that the solicitation was so broad, nonspecific and lacking in standards as to make it difficult to economically procure the corkboard Lutz supplies.

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Lutz also contends that as a small business it was entitled to fairer and more reasonable treatment by GSA. In this connection, Lutz claims that prior cork-board solicitations had been small business set-asides, but points out that this solicitation was not set aside for small business concerns.

Our Bid Protest Procedures require that protests based upon alleged improprieties apparent in the solicitation be filed prior to the closing date and in other cases be filed with the General Accounting Office or the contracting agency within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2 (1980).

The solicitation was advertised in the October 21, 1980, issue of the Commerce Business Daily (CBD). The CBD advised that the closing date was set for November 19, 1980. We have held that publication of a procurement in the CBD constitutes constructive notice of the solicitation and its contents. Houston Fearless 76, B-199935, September 18, 1980, 80-2 CPD 206; Delphi, Industries, Inc., 58 Comp. Gen. 248 (1979), 79-1 CPD 67.

Thus, Lutz' protest of its failure to receive the solicitation is untimely and will not be considered on its merits since it was filed more than 10 working days after the closing date, November 19, 1980, the latest date Lutz could have constructively become aware of the basis of this protest issue. See The Bureau of National Affairs, Inc., B-189962, September 20, 1977, 77-2 CPD 206; Southeastern Carbonics, Inc., B-187976, November 12, 1976, 76-2 CPD 406.

Furthermore, Lutz' argument that the solicitation was defective constitutes a protest based upon alleged improprieties apparent in the solicitation which had to be filed prior to the closing date. Since the notice of the solicitation and the closing date were published in the CBD, this constituted constructive notice of the solicitation contents. Houston Fearless 76, supra. Here, Lutz did not protest this issue until after the closing date and thus the issue is untimely raised and will not be considered on the merits.

Therefore, the protest is dismissed.

Harry R. Jan Cleva
For Milton J. Socolar
General Counsel