

**DECISION**

17977 *Golden*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202703

DATE: May 1, 1981

MATTER OF: Micro-Mil, Inc.

**DIGEST:**

*Alleging*  
[Protest that contract should have been awarded on competitive basis] and that protester should have been solicited, filed after closing date for receipt of proposals, is untimely since agency's publication of notice in Commerce Business Daily of decision to negotiate with one source and of closing date placed protester on notice of basis of protest prior to closing date.

Micro-Mil, Inc. (Micro), protests award of contract No. F09603-81-C-3620 by Warner Robins Air Force Base (Air Force) for 4k and 8k Prom (programmable read only memory devices).

A letter dated March 27, 1981, from the Air Force to the protester states that the two solicitations from which the contract resulted were synopsized in the Commerce Business Daily (CBD) on November 7, 1980, and November 12, 1980; that the contract was negotiated under the authority of Defense Acquisition Regulation (DAR) § 3-202 (1976 ed., DAC 76-20, September 17, 1979), the public exigency justification for negotiated procurements; that in accordance with note 33 referred to in the specific notices of procurement and also published in the CBD the first working day of each week, only those sources for these items previously approved by the Government were solicited; and that Signetics Corporation (Signetics) was awarded the contract.

Micro alleges that the solicitation synopsis was not in the November 7, 1980, CBD, although it concedes that the November 12, 1980, CBD contained the second solicitation. Micro argues that there was adequate time to meet the Air Force's needs without resorting to emergency procedures and to negotiate a noncompetitive contract. Micro also argues that it was a

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*Air Force procurement*

qualified dealer supplying the parts of a qualified original source for this procurement under the DOD High Dollar Spare Parts Breakout Program and should have been solicited under the criteria for eligibility for award.

Our Bid Protest Procedures require that protests based upon alleged improprieties apparent in the solicitation be filed prior to the closing date for receipt of proposals 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 solicitations underlying the protested contract were advertised in the November 7, 1980, and November 12, 1980, issues of the CBD. The November 7, 1980, CBD notice was referenced under section 58, Communication Equipment, while the November 12 notice was referenced under Electrical and Electronic Equipment Components. The closing dates were stated in the notices as December 1, 1980, and December 4, 1980, respectively. This Office has 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.

Since the first solicitation was properly referenced in the CBD, we reject Micro's allegation to the contrary. Micro's other allegations, that this procurement should not have been a negotiated, noncompetitive solicitation, and, furthermore, that Micro was a qualified dealer under the note 33 procedures and thus should have been solicited, in our view, essentially relate to the decision to award a sole-source contract. This allegation constitutes a protest based upon an alleged impropriety apparent in the solicitation which, as noted above, must be filed prior to the closing date. Since notice of the decision to conduct negotiations only with Signetics and the closing date were published in the CBD, the basis of the protest should have been known to the protester in advance of the December 1, 1980, and December 4, 1980, closing dates. MTS Systems Corporation, B-200131, September 30, 1980, 80-2 CPD 234. Here, Micro did not protest until approximately 4 months after the closing dates and, therefore, these allegations are untimely raised and will not be considered on the merits.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel