

Boyle

**DECISION**



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

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**FILE:** B-203352 **DATE:** November 9, 1981  
**MATTER OF:** Racal-Milgo Government Systems, Inc.

**DIGEST:**

Protest against a sole-source award filed on May 18, 1981--based on information received by the protester on April 27, 1981--is untimely under 4 C.F.R. § 21.2(b)(2) (1981), since the matter was not filed within 10 working days after the protester first learned of the agency's justification for the sole-source award.

Racal-Milgo Government Systems, Inc. (R-M), protests the award of a contract on a sole-source basis to Codex Corporation by the Small Business Administration (SBA) for the installation, lease, and maintenance of a data communications system. We conclude that R-M's protest is untimely.

R-M became aware of the SBA's need for improvement in its data communication system and R-M submitted an unsolicited proposal to SBA to satisfy the need. R-M proposed a multiport system. When R-M learned that SBA made award to Codex, R-M asked SBA for certain information regarding the selection of Codex.

On April 27, 1981, R-M received documents from the SBA explaining SBA's basis for selecting Codex. The documents revealed that SBA determined that Codex was the only known source of a multiplexer system which SBA considered to be the only type of system to satisfy SBA's unique requirements.

On May 18, 1981, R-M protested here contending that R-M also could have proposed a multiplexer system with the same capabilities as the Codex system and probably at a lower life cycle cost than the Codex system. SBA did not disclose to R-M the life cycle cost of the Codex system.

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R-M's initial submission insists that SBA withheld important information making it impossible for R-M to adequately state its basis for protest. R-M filed notice that it was appealing SBA's denial of certain information regarding what SBA bought at what price. R-M argued that SBA erred in concluding that R-M did not have the capability to propose on the same basis as Codex. R-M also argued that SBA never gave R-M an opportunity to propose on the same basis as Codex. In view of R-M's insistence that vital information was withheld by SBA and the other very serious allegations of wrongdoing by SBA officials, we requested SBA to respond to the protest.

On July 16, 1981, SBA denied R-M's appeal for the requested information. On August 5, 1981, R-M appealed SBA's denial to the United States District Court for the District of Columbia. On August 10, 1981, SBA responded to R-M's protest arguing that the protest was untimely and explaining that SBA was not aware until R-M protested here that R-M could have proposed a system with capabilities similar to the Codex system. In reply, by letters dated August 31 and October 21, 1981, R-M argues that SBA was aware that R-M could propose a system like the Codex system because R-M's representative expressly told SBA's representative of R-M's multiplexer-system capability. We note that the record contains no written evidence, in existence at the time SBA selected Codex, to establish that R-M had a multiplexer system capability.

From the perspective of the complete record, R-M's basis of protest is essentially that SBA erroneously determined that Codex was the only source for a multiplexer system, in part, because SBA actually knew that R-M could propose a system with the required capabilities. Where the only evidence is the conflicting statements of the protester, the protester has not successfully carried its burden of proof regarding SBA's alleged violations of law. Here, however, we will not reach the merits of R-M's protest since, after carefully considering R-M's and SBA's arguments, it appears clear to us now that on April 27, 1981, R-M knew or should have known its basis of protest. The precise details of what SBA ordered and at what cost were irrelevant since R-M already knew why SBA selected Codex. In our

view, R-M needed no other information to form its basis of protest. Therefore, R-M's protest filed here on May 18, 1981, is untimely; under 4 C.F.R. § 21.2(b)(2) (1981), the matter should have been filed within 10 working days after R-M first learned of SBA's justification for the sole-source award to Codex. See Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439; Martin Marietta Corporation, B-198782, September 9, 1980, 80-2 CPD 185. Since R-M's protest was not timely filed, we will not consider it on the merits.

Protest dismissed.

*F. A. Rowland Jr.*  
For  
Harry R. Van Cleve  
Acting General Counsel