

DECISION

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

FILE: B-211636

DATE: May 12, 1983

MATTER OF: Burgmaster Division,
Houdaille Industries, Inc.

DIGEST:

Protest is untimely where filed 1 month after date of publication of notice of award in Commerce Business Daily (CBD), since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known. 4 C.F.R. § 21.2(b)(2).

Burgmaster Division, Houdaille Industries, Inc. protests the award of a contract to Acroloc, Inc. by the Department of the Navy under request for proposals No. N00600-82-R-3442.

According to Burgmaster, it received the solicitation on August 2, 1982, and subsequently expressed concern to the contracting officer about several items in the solicitation. Burgmaster states that when it again called the contracting officer on August 16, she advised that the solicitation would be canceled and a new solicitation would be issued at a later date. Burgmaster assumed that it would receive the new solicitation since it is on the contracting activity's bidders list. Consequently, it "closed the file" on this solicitation and did not submit an offer. The agency, however, did not cancel the solicitation and on February 3, 1983, it awarded a contract under the solicitation to Acroloc. Burgmaster states that it learned of the award from an announcement in the Commerce Business Daily (CBD) of March 28, and it filed this protest with our Office on April 29.

The protest is untimely. Our Bid Protest Procedures require that protests be filed with our 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. § 21.2(b)(2) (1983). Protesters are charged with constructive notice of

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announcements published in the CBD, Scripto, Inc., B-209450, November 9, 1982, 82-2 CPD 431. Therefore, Burgmaster was put on notice of the facts giving rise to its protest by the announcement of award in the CBD of March 28. Since Burgmaster did not file this protest until 1 month after the firm knew or should have known of its basis for protest, the protest is untimely and will not be considered. See Welbilt Electronic Die Corporation, B-208227, October 12, 1982, 82-2 CPD 326.

The protest is dismissed.

fn *J. H. Barclay, Jr.*
Harry R. Van Cleve
Acting General Counsel