

DECISION

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

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FILE: B-212349**DATE:** February 22, 1984**MATTER OF:** International Business Investments,
Inc.**DIGEST:**

1. Protest against impropriety in an RFP that the protester received after the closing date for receipt of proposals is timely where the CBD announcement, which generally constitutes constructive notice of a solicitation's contents, did not include the closing date, the protester diligently requested a copy of the solicitation, and the protest was filed within 10 working days after receipt of the RFP.
2. Agency's use of a 20-day proposal preparation period did not prejudice the protester who could not meet that time-frame, and who complains that formal advertising should have been used instead of negotiation, and that under formal advertising 30 days should have been allowed, since a 20-day period in fact was proper even if the requirement had been advertised.

International Business Investments, Inc. (IBI) protests the 20-day proposal preparation period in request for proposals (RFP) No. DTCG39-83-R-00825, a total small business set-aside issued by the United States Coast Guard for security guard and watchman services at the Coast Guard Academy in New London, Connecticut. IBI also complains that the requirement should have been secured by formal advertising rather than by negotiated procedures. We deny the protest.

As a threshold issue, the Coast Guard asserts that IBI's protest is untimely filed and should not be considered on the merits. The basis for this view is the fact that the closing date for receipt of proposals under the RFP, which was synopsisized in the Commerce Business Daily (CBD), and issued, on June 7, 1983, was June 27, but IBI did not file its protest with our Office until July 8. In this respect, section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), requires that a protest

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against an alleged impropriety in a negotiated solicitation that is apparent prior to the closing date for receipt of initial proposals be filed before that date.

In response, IBI points out that it did not receive a copy of the solicitation until July 6, 1983 and that it dispatched its protest only 2 days later.

We find the protest timely. The CBD synopsis of June 7 did not state the closing date for receipt of proposals, June 27, contrary to the requirement of the procurement regulations that contemplate such synopses. See Federal Procurement Regulations (FPR) § 1-1.1003-7(b)(4) (1964 ed.). Further, IBI diligently requested a copy of the solicitation on June 13, and filed its protest in our Office almost immediately after receiving the RFP. While the CBD announcement of a procurement generally constitutes constructive notice of the solicitation's contents, we do not believe it would be fair to charge IBI with notice in this circumstance. Instead, we believe section 21.2(b)(2) of our Procedures should apply, which requires that a protest be filed within 10 working days after the basis for protest is known. Since IBI's filing meets that requirement, we will consider the protest on the merits.

IBI contends that the Coast Guard's requirements, should have been met through formal advertising rather than negotiation. IBI additionally contends that if formal advertising had been used, bidders should have been given 30 days to prepare their bids in view of the Coast Guard's assertion that "the requirement for security services involved special situations unique to the Coast Guard Academy." IBI points out that FPR § 1-2.202-1(c) states that, as a general rule, bidding time should not be less than 30 days when procuring other than standard commercial articles or services (as opposed to 20 days for standard ones).¹

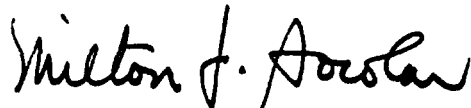
¹ The regulations concerning negotiated procurements, unlike the regulations governing formal advertising, do not specify a definite time period to be allowed for preparing proposals. The date set for the receipt of offers in a negotiated procurement therefore is a matter of judgment vested in the contracting officer, which we will not question unless it is arbitrary or capricious, or unduly restrictive of competition. See Jets Services, Inc., B-207205, December 6, 1982, 82-2 CPD 504.

In response, the Coast Guard asserts that the need to maintain uninterrupted security services, together with special situations unique to the Coast Guard Academy, prompted the contracting officer to use negotiated procedures. The Coast Guard admits upon review, however, that formal advertising should have been used, since these are services that normally are procured that way, but argues that the security services are, in fact, standard services so that a preparation period of 20 days was proper in any event.

We agree with the Coast Guard that if the requirement had been advertised, a 20-day bid preparation period would have been appropriate. We have recognized in connection with formal advertising that security guard services are standard commercial services for purposes of FPR § 1-2.202-1(c), unless there is some aspect of them that significantly alters their character from that normally perceived. Wells Fargo Guard Services--Reconsideration, B-203226.2, May 24, 1982, 82-1 CPD 485. It appears from the record that the "special situations unique to the Coast Guard Academy" involve the fact that the Academy must have continuous security guard services, and that there was not much time to effect a contract to insure the Academy's need was met. In our view, this does not change the nature of the security guard services themselves to other than standard services.

The 20-day period therefore was proper whether or not the procurement was conducted by formal advertising. Wells Fargo Guard Services--Reconsideration, supra. IBI, which received a copy of the RFP 28 days after issuance, thus could not be included in the competition irrespective of the procurement method used. In this respect, the Coast Guard clearly received adequate competition, and IBI has not alleged, nor does the record indicate, that its receipt of the solicitation after closing was the result of deliberate action on the part of the Coast Guard to prevent the firm from competing for the award. See CGA/Allen Software Products Group, B-209090, November 3, 1982, 82-2 CPD 406.

Accordingly, we have no legal basis to object to the 20-day period and the consequent failure to include IBI in the competition. The protest is denied.



Acting Comptroller General
of the United States