



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Marine Instrument Company  
File: B-228462  
Date: November 9, 1987

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### DIGEST

1. Protest that agency improperly failed to send protester a solicitation is dismissed as untimely when not filed within 10 working days after the closing date for the receipt of proposals as published in the Commerce Business Daily, or after the extended closing date.
2. Allegation by a protester that is not in line for award even if the issue is decided in its favor will not be considered because the protester does not have the direct economic interest required to be considered an interested party under General Accounting Office Bid Protest Regulations.

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### DECISION

Marine Instrument Company protests its failure to receive request for proposals (RFP) No. N00104-87-R-6643, issued by the Naval Supply Systems Command. Marine also protests the award to John E. Hand & Sons Company on the basis that the awardee's offer was for items not in conformance with the RFP.

We dismiss the protest. The first allegation is untimely filed, and the protester is not a party sufficiently interested to raise the second.

The Navy has advised us that the RFP, issued on July 22, 1987, was synopsisized in the Commerce Business Daily (CBD) on July 6, with an August 17 closing date for receipt of proposals specified. Although the actual closing date on the solicitation was extended until August 24, Marine did not submit an offer, and did not file this protest until October 8.

For a protest to our Office to be timely, it must be filed with either our Office or the contracting agency within 10 working days after the basis of the protest is known or

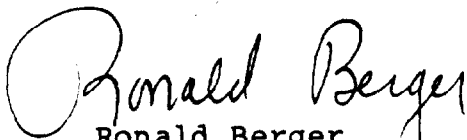
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should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). Here, even though the closing date ultimately was extended, since the CBD announcement listed August 17 as the closing date for receipt of proposals, Marine should have been aware that to submit an offer, it would need a copy of the solicitation by that date. In this respect, publication in the CBD constitutes constructive notice of the procurement action publicized. Federal Services Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 710. When Marine did not receive the solicitation by August 17, it was on notice of the basis for its protest and, thus, should have raised the issue with the Navy or our Office within 10 days thereafter. Tobe Deutschmann Labs, Inc., B-221684, Jan. 28, 1986, 86-1 CPD ¶ 102. Because Marine did not do so, and also did not protest nonreceipt of the RFP within 10 days of the extended closing date, see Aurora Spectrum Int'l--Reconsideration, B-214162.2 Mar. 20, 1984, 84-1 CPD ¶ 339, its October 8 protest to our Office is untimely and will not be considered on the merits.

As for Marine's contention that the awardee's offer was non-conforming, the protester lacks standing to raise this issue. Our Bid Protest Regulations require that a protester be "interested" before we will consider its protest. 4 C.F.R. § 21.1(a). A protester is not interested where it would not be in line for the award even if its protest were upheld. Communications Facility Automation Systems Int'l, B-224181, Jan. 9, 1987, 87-1 CPD ¶ 40. Since Marine did not submit a proposal, and two offers were received, even if its protest concerning the award were successful, the firm would not receive the award. Accordingly, Marine is not an interested party to protest this matter. In any event, we have obtained a copy of the awardee's offer from the agency and find no exception was taken to the specifications of the RFP.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel