



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Neal R. Gross and Company, Inc.

File: B-229966

Date: March 24, 1988

DIGEST

Where protester knew of the basis for its protest--the failure of the agency to solicit the firm--prior to filing a Freedom of Information Act (FOIA) request for information concerning the procurement, protest filed more than 10 working days after the basis of the protest was known, even though within 10 working days of the protester's receipt of information under FOIA, is untimely.

DECISION

Neal R. Gross and Company, Inc., protests the award by the National Mediation Board (NMB) of purchase order No. NMB 88/02 to Ann Riley & Associates. The agency awarded the purchase order, for reporting services, based on the results of an oral solicitation under the small purchase procedures authorized by 41 U.S.C. § 253(g) (Supp. III 1985). Gross, the prior reporting services contractor, contends that the agency did not promote competition to the maximum extent practicable, as required by 41 U.S.C. § 253(g)(4), because the agency failed to solicit a quote from the firm. We dismiss the protest as untimely.

The protester contends that before learning of the award to Riley it made repeated inquiries concerning a possible solicitation for the fiscal year 1988 contract and received assurances from the agency that the firm would be notified of any such solicitation. Gross says that in late November of 1987, it learned informally through an NMB contact of the award to Riley, and on December 1 it submitted a Freedom of Information Act (FOIA) request to the agency for copies of both the contract and the agency's determination that award had been made at a fair and reasonable price. The protester received copies of the contract and the bid abstract on December 28.

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On January 11, 1988, within 10 working days of December 28, Gross filed a protest with this Office complaining that the agency had failed to solicit the firm and had made award to Riley on a sole-source basis at a price that was not fair and reasonable. With respect to this latter contention, Gross notes that only one of the four firms solicited by the agency quoted rates for all of the services required, and that the rates quoted by that firm cannot be considered fair and reasonable when compared with the rate Gross charged the agency under its prior contracts, which Gross says was zero dollars per page.^{1/}

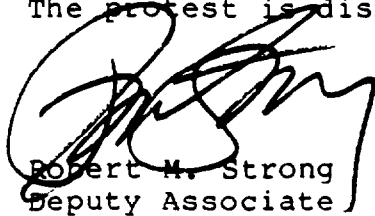
Our Bid Protest Regulations provide that a protest of other than an apparent solicitation impropriety must be filed not later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). Where a protest is based on information disclosed pursuant to FOIA, the protest is timely if filed within 10 working days of when the protester received the information, provided that the protester diligently pursued the release of the information. Robbins-Gioia, Inc., B-229757, Dec. 28, 1987, 87-2 CPD ¶ 632.

In this case, although Gross promptly submitted a FOIA request to the agency after learning of the award to Riley, the firm's protest is not based on information disclosed pursuant to FOIA, but rather is based on information known to Gross prior to the submission of its FOIA request. The protester knew in late November, 1987, of the contract award to Riley (the FOIA request cites purchase order No. NMB 88/02 and names Riley as the awardee) and that Gross had not been solicited for a rate quote. The protester also knew at that time that whatever rate Riley had quoted, it could not have been lower than the rate of zero dollars per page Gross says it charged the government under prior contracts. The protest that the agency failed to solicit Gross therefore is untimely. To the extent that Gross thinks that the NMB did not otherwise obtain sufficient competition and did not secure fair and reasonable prices, Gross' only cognizable interest, in the context of a bid protest, is that of a

^{1/} Under Gross' prior contracts, the firm charged \$2.00 per page for copies.

potential competitor, see 4 C.F.R. §§ 21.0(a), 21.1(a), an interest that Gross failed to protect through the filing of a timely protest.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name and title.

Robert M. Strong
Deputy Associate
General Counsel