



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

# **Decision**

**Matter of:** Novitas, Inc.--Second Request for  
Reconsideration

**File:** B-238178.3

**Date:** May 17, 1990

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James D. Himonas, for the protester.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Significant issue exception to the General Accounting Office's timeliness requirements will be invoked only where the protest involves a matter which has not been considered on the merits in previous decisions and which is of widespread interest to the procurement community.

2. Protester's lack of actual knowledge of General Accounting Office's Bid Protest Regulations is not a defense to dismissal of its protest as untimely since protesters are on constructive notice of the Regulations, as they are published in the Federal Register and Code of Federal Regulations.

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## **DECISION**

Novitas, Inc., requests reconsideration of our decision, Novitas, Inc.--Request for Recon., B-238178.2, Feb. 23, 1990, 90-1 CPD ¶ 220, denying its request for reconsideration of our dismissal as untimely of its protest under request for proposals (RFP) No. 7FXI-R6-89-6210-B, issued by the General Services Administration (GSA) for Federal Supply Class 62/67-Lighting Accessories.

We deny the request for reconsideration.

Federal Acquisition Regulation (FAR) §§ 15.804-3(c) and 15.804-3(h) call for offerors to submit sales data in sufficient detail to enable the contracting officer to determine the commerciality of the items offered, price reasonableness, and whether offerors qualify for waiver of

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the requirement for certified cost or pricing data. In accordance with these provisions, the RFP required offerors to indicate their total annual sales to both government and non-government customers. Because Novitas submitted only limited information on its non-government sales, GSA rejected its offer on the ground that the information Novitas supplied was insufficient to make the determinations contemplated by FAR §§ 15.804-3(c) and 15.804-3(h). Novitas challenged the agency's position, arguing that total sales volume need not be revealed to meet the FAR requirements.

In Novitas, Inc.--Request for Recon., B-238178.2, supra, we noted that the requirement for submission of total annual sales volume was explicitly set out in the RFP. Thus, to the extent that Novitas challenged the requirement, the protest concerned an alleged solicitation impropriety which, under our Bid Protest Regulations, was required to be filed before bid opening on May 1, 1989. 4 C.F.R. § 21.2(a)(1) (1989). Accordingly, we found that since the protest was not filed until well after that date, it was clearly untimely.

Novitas' protest also was untimely under 4 C.F.R. § 21.2(a)(3), which provides that a protest initially filed with a contracting agency is untimely if it is not filed with our Office within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. Novitas first complained of the rejection of its offer to GSA by letter dated June 16; GSA replied to Novitas by letter dated August 9, affirming its decision to reject the offer. Novitas had 10 working days from receipt of that letter to protest the rejection of its bid. Since Novitas did not file its protest in our Office until December 29, the protest was properly dismissed as untimely.

In its second request for reconsideration, Novitas argues that the timeliness of its protest should not be determined with reference to GSA's August 9 letter, because Novitas continued to correspond with GSA regarding the rejection of its offer until December. The fact that Novitas attempted to pursue the matter with GSA after its offer was rejected rather than file a protest with our Office does not toll our timeliness requirements. Midwest CATV--Request for Recon., B-233105.4, July 20, 1989, 89-2 CPD ¶ 64.

Novitas also states that it did not file its initial protest with our Office earlier because, apparently lacking actual knowledge of how to file its protest in our Office, it awaited advice from GSA. However, a protester's lack of actual knowledge of our Bid Protest Regulations is not a defense to a dismissal of its protest as untimely because

prospective contractors are on constructive notice of our Regulations, since they are published in the Federal Register and Code of Federal Regulations. See Rudd Constr. Inc., B-234936, Apr. 10, 1989, 89-1 CPD ¶ 367.

Novitas also reiterates the argument it raised in its previous request for reconsideration, contending that we should consider the protest under the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(b). Novitas maintains that since the issues presented by its protest have also been raised by other companies and trade organizations, its protest presents issues of widespread interest to the procurement community.

Our timeliness rules reflect the dual requirement of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Grant Technical Servs., B-235231.2, May 26, 1989, 89-1 CPD ¶ 514. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely invoked. Brandebury Aerostructures Inc.--Request for Recon., B-236792.2, Oct. 10, 1989, 89-2 CPD ¶ 334. Under the significant issue exception to our timeliness rules, we will consider an untimely protest only if it raises an issue of first impression and of widespread interest to the procurement community. See 4 C.F.R. § 21.2(b); Hunter Envtl. Servs., Inc., B-232359, Sept. 15, 1988, 88-2 CPD ¶ 251.

Here, while we recognize the importance of the matter to Novitas, its protest does not present an issue of such widespread interest or importance to the procurement community as to justify invoking the exception, merely because, as Novitas argues, other contractors and trade organizations disagree with GSA's method of evaluating compliance with the commerciality requirement. Moreover, if the challenged agency action affects other businesses and is as recurrent as Novitas alleges, it should have ample opportunity to file timely protests challenging GSA's position in connection with future procurements.

The request for reconsideration is denied.



James F. Hinchman  
General Counsel