



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Curtis-Universal, Inc.

**File:** B-244663

**Date:** August 14, 1991

Christopher J. Jaekels, Esq., Frisch Dudek, for the protester.  
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.

John Formica, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest against the set aside of a solicitation for small disadvantaged businesses, which was publicized through a Commerce Business Daily notice, is untimely since the protest was filed several months after the solicitation closing date.

2. Where a protester is ineligible for award under a total small disadvantaged business set-aside, General Accounting Office will not consider the firm's objection to the agency's failure to furnish it a copy of the solicitation since the protester is not an interested party whose direct economic interest would be affected by a resolution of this issue.

### DECISION

Curtis-Universal, Inc. protests the award of a contract to any other offeror under request for proposals (RFP) No. DADA09-91-R-0003, issued as a small disadvantaged business (SDB) set-aside by the Army for ambulance services for the William Beaumont Army Medical Center, El Paso, Texas. Curtis mainly complains that it was not given the opportunity to compete as it was not given a copy of the solicitation.

We summarily dismiss the protest since the protester, not an SDB, did not timely protest the fact that the solicitation was set aside for SDBs and thus it is not an interested party to complain of its exclusion from the competition.

The requirement was synopsisized in the January 3, 1991, edition of the Commerce Business Daily (CBD). The announcement clearly identified the procurement as one limited to SDBs and specified a closing date of February 25. Curtis, the incumbent, states that "[d]uring the course of the first

6 months of 1991" it inquired on "numerous occasions" as to the reprocurement of the ambulance services. Curtis also states that because the agency refused to provide any information on the reprocurement, it filed Freedom of Information Act (FOIA) requests on April 4 and May 28. On June 18, in response to its FOIA requests, Curtis received a copy of the solicitation and an abstract of the offers received.

Curtis initially protested to our Office July 2, contending that the agency's failure to provide it with the solicitation, despite its repeated requests, unfairly deprived it of an opportunity to compete for the award and that the performance requirements contained in the solicitation are not sufficiently stringent. Subsequently, in its response to an agency request for summary dismissal of the protest Curtis for the first time on July 24 challenged the agency's determination to issue the solicitation as a set-aside for SDBs.

Since Curtis did not timely protest the SDB set-aside and it is not an SDB, it is not an interested party to protest the agency's failure to furnish it a copy of the solicitation or to complain about its provisions.

First, as far as the timeliness of the SDB issue is concerned, regardless of whether Curtis actually knew of the January 3 CBD notice, when a procuring agency publishes a synopsis of a procurement in the CBD, protesters are charged with constructive notice of the solicitation and its contents. AAR Brooks & Perkins, B-220026, Sept. 30, 1985, 85-2 CPD ¶ 358. Here, the synopsis provided that the procurement was an SDB set-aside and contained the solicitation closing date; therefore, any arguments concerning the propriety of the set-aside should have been raised by that date.<sup>1/</sup> Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991); Id.

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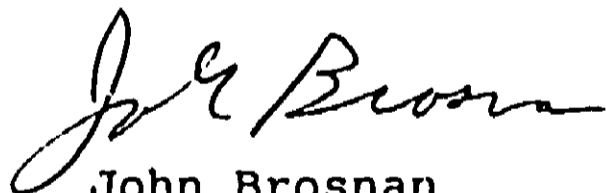
<sup>1/</sup> While the synopsis stated that February 25 was the solicitation closing date, the due date for receipt of proposals in the solicitation was actually March 7. In any event, Curtis' July 24 protest was not close to either date. Neither were Curtis' April and May FOIA requests.

Curtis' did not dispute the SDB set-aside until July 24, several months after the solicitation's closing date, this protest allegation is thus untimely and will not be considered.<sup>2/</sup>

Curtis argues that even if its protest of the SDB set-aside is untimely, we should consider the matter under the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(c). We decline to do so. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air, Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly constructed and rarely used. See McGhee Constr., Inc., B-241556, Jan. 10, 1991, 91-1 CPD ¶ 27.

In order to protest the agency's failure to provide it a solicitation or to complain about the terms of the solicitation, Curtis must be an interested party under our Regulations. 4 C.F.R. § 21.1(a). To be considered an interested party, a firm must be an actual or prospective offeror whose direct economic interest would be affected by the award or the failure to award a contract. 4 C.F.R. § 21.0(a). The record shows that Curtis is not an SDB. That firm is therefore not eligible for award under this solicitation which is restricted to SDBs. Since Curtis has not raised a timely objection to the SDB restriction in the solicitation, it is not an interested party to raise other issues concerning the solicitation. AAR Brooks & Perkins, B-220026, supra.

The protest is dismissed.



John Brosnan  
Assistant General Counsel

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<sup>2/</sup> Although on June 18 Curtis received a copy of the RFP, which states on its cover sheet that it was a set-aside for SDBs, Curtis still did raise the SDB set-aside as a protest issue until more than 1 month later.