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**DECISION**

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

*[Protest Alleging Restrictive Specifications in RFP]*

FILE: B-202511

DATE: April 6, 1981

MATTER OF: Robert Dowling

**DIGEST:**

1. Protest concerning allegedly restrictive specifications which is filed after time set for receipt of proposals is untimely and not for consideration on the merits since GAO Bid Protest Procedures require such protests to be filed prior to such time.
2. Where agency protest regulations require oral protest of alleged specification deficiency to be confirmed in writing prior to closing time for receipt of proposals, protester's failure to file written protest with agency prior to such time renders untimely subsequent protest filed with GAO after closing date.

Robert Dowling protests the allegedly restrictive specifications of request for proposals (RFP) No. SSA-RFP-81-0118 by the Department of Health and Human Services. Dowling contends that the specifications were written in a manner which excludes all but two other offerors.

Our Bid Protest Procedures require that protests based on alleged improprieties in a solicitation which are apparent prior to the time for receipt of proposals must be filed prior to that time. 4 C.F.R. §20.2(b)(1) (1980). The protester states that proposals were due at 3:00 p.m. on March 16, 1981. The protest was filed (received) in this Office at 3:02 p.m. on March 16, as evidenced by the time/date stamp on the protest letter, and thus is untimely unless an earlier protest was filed with the agency. In this respect, the protester asserts that it did file an oral protest with the contracting

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officer at approximately 2 p.m. on that date. Mr. Dowling further states, however, that the contracting officer said he would refuse to consider the protest unless it was filed in writing prior to the closing time. Mr. Dowling admits that he was unable to file a written protest with the contracting officer by that time.

The Federal Procurement Regulations (FPR) permit the filing of oral protests. See FPR § 1-2.407-8 (1964 ed. amend. 139). The regulations further provide that contracting officers may require that written confirmation of an oral protest be submitted by a specified time. The agency's regulations, in turn, require that written confirmation is to be requested and that it must be filed in accordance with the agency's own timeliness rules. 41 C.F.R. § 3-2.407.8 (1979). Those rules are the same as those in our Bid Protest Procedures, e.g., a protest of a solicitation deficiency must be filed prior to the time for receipt of proposals. 41 C.F.R. § 3-2.407.8.

In light of these regulations, we must view the protest to our Office as untimely. Under our Procedures, we will consider a protest filed here after a protest has been filed initially with the agency provided the initial protest itself was timely filed. 4 C.F.R. § 20.2(a). In this regard, our Procedures further provide that, in measuring the timeliness of a protest filed initially with an agency, we will give effect to agency timeliness rules. 4 C.F.R. § 20.2(a). In this case, the agency's timeliness rules require that a protest in writing be filed prior to the closing date. The protester concedes that he was unable to meet that requirement. Consequently, we find the protest filed with the agency to be untimely, and therefore the subsequent protest lodged with our Office also is untimely and not for consideration on the merits.

The protest is dismissed.

  
Harry R. Van Cleve  
Acting General Counsel