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DECISION



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

FILE: B-204317

DATE: January 26, 1982

MATTER OF: Demlar Medical, Inc.

DIGEST:

Protest alleging that RFP duplicates work already performed by protester on its own initiative, filed after closing date for receipt of proposals, is untimely under 4 C.F.R. § 21.2(b)(1) (1981) as alleged impropriety was apparent from solicitation, and the good cause exception to the timeliness requirements is not applicable.

Demlar Medical, Inc. (Demlar), protests the award of a contract under request for proposals (RFP) No. NIH-NINCDS-81-05, issued by the Department of Health and Human Services (HHS) for the research and development of a system capable of assessing the extent of high frequency hearing impairment in humans. Demlar, which has done research and development in the area covered by this RFP, protests that a major portion of the RFP statement of work duplicates research and development of audiometer technology already performed by Demlar and available to the public from Demlar. Demlar asserts that the RFP should be modified to eliminate the work which Demlar alleges it has performed on its own initiative and to incorporate other refinements in order to reduce time and cost to the Government.

We dismiss Demlar's protest as untimely.

Our Bid Protest Procedures require that protests based upon alleged improprieties apparent in the RFP prior to the closing date for receipt of proposals shall be filed before the closing date, 4 C.F.R. § 21.2(b)(1) (1981). Here, the record indicates that Demlar was a participant in the procurement and submitted a proposal on the proposal due date of February 24, 1981. However, Demlar's protest was not filed with our Office until August 7, 1981.

While Demlar's initial protest letter advised that it had been awarded a Federal Supply Service contract for audiometers, effective August 1, 1981, and seemed to point to this fact as support for its basic protest, in reviewing the Demlar submissions, especially its comments dated December 14, 1981, it is evident that the thrust of Demlar's protest concerns alleged improprieties in the RFP statement of work. Demlar's arguments that its delay in protesting was the result of HHS's delays in supplying information, HHS's misrepresentations, and HHS's ignoring of Demlar's inquiries do not excuse Demlar from complying with bid protest timeliness requirements. See Murphy Anderson Visual Concepts--Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79; Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412. Our Bid Protest Procedures provide objective criteria for application by this Office to all protests before us and may not be waived by the action or inaction of a contracting officer. See Metal Art, Inc., B-193038, B-192992, February 8, 1979, 79-1 CPD 84.

Demlar also contends that even if the issue raised is determined untimely, HHS's above-mentioned alleged misconduct justifies consideration of the merits of the untimely protest under the good cause exception to our timeliness requirements. 4 C.F.R. § 21.2(c) (1981). The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of the protest. See McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD 163. Demlar states that it notified HHS of the existence of its device as early as November 1980, and the record indicates that it had received a copy of the RFP during November 1980. Thus, Demlar knew the RFP covered research it had performed or was performing during this period. The record contains no compelling reason beyond the protester's control for not protesting prior to the proposal due date.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel