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**DECISION**



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

FILE: B-205164

DATE: March 3, 1982

MATTER OF: Institute of Gerontology, University  
of Michigan

**DIGEST:**

Protest that deadline for submission of best and final offers did not allow adequate proposal preparation time is untimely under 4 C.F.R. § 21.2(b)(1) (1981) since the protest was filed after the closing date.

The University of Michigan Institute of Gerontology (Institute) protests the Department of Health and Human Services (HHS) refusal to consider its best and final offer which was submitted after the time specified for the receipt of the final offers. We dismiss the protest.

In the Institute's protest letter, it appeared that the Institute was contending that the Government was responsible for the delay in submitting its best and final offer. In comments in response to the agency report, the Institute states it does not dispute the late submission of its offer, but, rather, protests that the agency provided insufficient time, less than 3 working days, to respond to questions raised by the HHS technical evaluation team, and to submit a best and final offer. We note the other two offerors in the competitive range timely submitted best and final offers. There is no dispute between the protester and the agency with regard to the fact that the protester was orally advised on September 23, 1981, that best and final offers were due on September 28 at 12 noon.

Our Bid Protest Procedures, 4 C.F.R. part 21 (1981), provide protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals and, in a negotiated procurement, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals. 4 C.F.R.

§ 21.2(b)(1). Allegedly insufficient response time for best and final offers involves the type of impropriety contemplated by that requirement. PSI Associates, Inc., B-200839, May 19, 1981, 81-1 CPD 382. While the advice of the best and final offer date and the question to be answered therein was oral, oral advice of this nature is permitted under Federal Procurement Regulations § 1-3.805-1(d) (1964 ed. amend. 153). Here, the Institute knew the basis of its protest on September 23, 1981, the day it was advised it would have only 3 working days to submit a best and final offer. Consequently, the Institute's protest received here after the closing date is untimely and will not be considered on the merits.

We dismiss the protest.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel