

DECISION

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

LIEBERMAN

FILE: B-206753.2

DATE: October 29, 1982

MATTER OF: Owl Technical Associates, Inc.--
Reconsideration

DIGEST:

Prior decision dismissing protest as untimely is affirmed. Protest will not be considered under good cause exception to timeliness rules where protester has not shown that it was prevented from timely filing its protest by reasons beyond its control.

Owl Technical Associates, Inc. (Owl), requests reconsideration of our decision, Owl Technical Associates, Inc., B-206753, April 5, 1982, 82-1 CPD 312, which dismissed as untimely Owl's protest under solicitation No. S0123002, issued by the Department of the Interior (Interior).

Owl's initial protest alleged that Interior improperly reopened the procurement to other offerors after Owl had been determined to have submitted the lowest cost, technically acceptable best and final offer. We held that Owl's protest alleged an impropriety in the solicitation specifications which was apparent prior to the March 5, 1982, closing date for the receipt of proposals, but was untimely filed in our Office thereafter on March 17, 1982. Owl now contends that there were special circumstances which prevented it from timely filing its protest, which presumably warrant our consideration of the protest under 4 C.F.R. § 21.2(c) (1982), the "good cause" exception for consideration of untimely protests under our Bid Protest Procedures.

Owl asserts that while it was advised by the contracting officer on February 25, 1982, of the reopening of the procurement, it was told that the next closing date was Friday, without being given a specific date. Owl also asserts that the contracting officer had previously indicated that if Owl were

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"difficult" to work with, it would not be awarded the contract. Therefore, Owl asserts that while it knew on February 25, 1982, that "there would perhaps be a problem," under the circumstances, it was virtually denied the opportunity to file a timely protest.

With respect to the allegation that Owl was not adequately advised of the exact closing date, we believe that if Owl was, in fact, uncertain as to which Friday date was intended, it had the obligation to seek clarification from the agency. Owl's argument that its delay in protesting was the result of the contracting officer's prior representations also does not excuse Owl from compliance with our bid protest timeliness requirements. Our Bid Protest Procedures provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a contracting officer. Demlar Medical, Inc., B-204317, January 26, 1982, 82-1 CPD 56.

The good cause exception to our timeliness requirements is limited to cases where some compelling reason beyond the protester's control prevents the protester from timely filing the protest. Kathryn A. Rogerson--Reconsideration, B-202366.2, April 29, 1981, 81-1 CPD 331; 52 Comp. Gen. 20, 23 (1972). Here, the protester simply exercised its business judgment not to protest until after the next closing date, apparently believing that this would provide it with the best opportunity for being awarded the contract on the basis of its extant best and final offer. Clearly, this does not constitute a compelling reason beyond its control.

We affirm our prior decision.



Acting Comptroller General
of the United States