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DECISION



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

FILE: B-210866

DATE: March 14, 1983

MATTER OF: Philadelphia Biologics Center

DIGEST:

Protest alleging defects which are apparent on the face of an RFP must be filed before the time for receipt of initial proposals. Protest letter included with the response to the RFP is not considered timely protest to the contracting agency.

Philadelphia Biologics Center (PBC) protests a provision in request for proposals (RFP) No. DLA120-83-R-0455, issued by the Defense Logistics Agency (DLA) for tetracycline hydrochloride capsules. PBC contends that a clause in the RFP limiting the source of active ingredients to domestic manufacturers is unduly restrictive.

We dismiss the protest as untimely.

Our Bid Protest Procedures require that an allegation of an impropriety in a solicitation which is apparent prior to the closing date for initial proposal receipt be filed before that date with either the General Accounting Office or the contracting agency. 4 C.F.R. § 21.2 (1982).

Here, the alleged impropriety was apparent upon receipt of the RFP--the protester states that the provision is on page 2a of the solicitation. The closing date for initial proposal receipt was February 11, 1983. PBC, however, first protested by letter to DLA included in the firm's response to the solicitation. (The protest to this Office was not filed until February 22.)

It is well-settled that a protest included in a proposal, which alleges apparent defects in a solicitation, is not a timely protest to the contracting agency under our timeliness rules, since there is no obligation that the agency read or evaluate the proposal until after the closing date. By failing to protest before the time proposals are due, the firm has precluded corrective action, if warranted, when it was most practicable, that

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is, before offerors had to complete the time-consuming and often expensive preparation, and submission, of their proposals. See Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD 369. A firm that participates in a procurement to the point of proposal submission therefore is deemed to have acquiesced, for protest timeliness purposes, in the terms and conditions set out in the solicitation. See Ven-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD 3.

Since PBC failed to submit a timely protest to either DLA or our Office concerning the RFP clause in issue, we will not consider the matter on the merits. The protest is dismissed.

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