

DECISION

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

FILE: B-216282

DATE: September 17, 1984

MATTER OF: Native American Management Services, Inc.

DIGEST:

1. Protest based upon alleged improprieties which do not exist in an initial RFP but which are subsequently incorporated therein must be filed with either the contracting agency or GAO not later than the next closing date for receipt of proposals following the incorporation.
2. Protest alleging other than solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. A protest filed within 10 working days after the protester's receipt of related documents in response to a Freedom of Information Act request thus is untimely if the protester knew the basis for protest before receiving the documents.

Native American Management Services, Inc. (NAMS) protests the award of a contract to Martin-Marietta Data Systems under request for proposals (RFP) No. ASC-K08-83-1010, issued by the Department of the Interior, Bureau of Indian Affairs. NAMS principally complains that certain changes to the RFP as incorporated by amendment were improper, and also that the agency, throughout the procurement process, evidenced a bias in favor of another firm. We dismiss the protest.

Our Bid Protest Procedures provide that protests based upon alleged improprieties that do not exist in an initial RFP but which are subsequently incorporated therein must be filed with either the contracting agency or this Office not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(b)(1) (1984). Here, the next closing date following the incorporation of the changes to the solicitation of which NAMS complains was January 26, 1984.

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Since the firm's protest to this Office was not filed until August 31, any allegations regarding the impropriety of the RFP changes are clearly untimely and will not be considered. See Trident Motors Inc., B-213458, Feb. 2, 1984, 84-1 CPD ¶ 142.

Our Procedures also provide that protests alleging other than solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2). NAMS raised the allegation of agency bias within 10 working days after receiving from Interior a number of documents, from which NAMS would have us infer bias, in response to a Freedom of Information Act (FOIA) request. While a protest based entirely on materials received pursuant to an FOIA request will be considered timely if filed within 10 days of such receipt, Canberra Industries, Inc., B-213663, June 22, 1984, 84-1 CPD ¶ 659, it is apparent from the record that NAMS was aware of the basis for this allegation before receiving the documents, and well before 10 working days prior to its August 31 filing of the protest. Hence, this matter is untimely raised as well. See Resource Engineering Incorporated, B-212453, Feb. 14, 1984, 84-1 CPD ¶ 190.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel