



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Dynamic Science, Inc.

**File:** B-228743

**Date:** August 21, 1987

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### **DIGEST**

1. Protest against requirement in solicitation that offerors document ability to receive cooperation from state officials is dismissed as untimely where protest, which concerns impropriety apparent from solicitation, was not filed until well after the closing date for receipt of initial proposals.
2. Award to an organization of state and local officials does not violate Federal Acquisition Regulation, 48 C.F.R. § 3.601, which provides that a contracting officer shall not knowingly award a contract to an organization substantially owned or controlled by "Government employees" since the FAR provision applies only to federal government employees.

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### **DECISION**

Dynamic Science, Inc. (DSI) protests award of a contract to the Association for Vital Records and Health Statistics (AVRHS), by the National Institutes of Health (NIH), under request for proposals (RFP) No. NCI-CP-71017-13, for development of a Pre-1979 national death index.

We dismiss the protest.

Basically, DSI protests on two grounds. First, DSI objects because the RFP required potential offerors to document that they could successfully solicit necessary cooperation from state Offices of Vital Statistics. Second, DSI contends that award of a contract to AVRHS was improper because the award represents an impermissible conflict of interest under

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Federal Acquisition Regulation (FAR), 48 C.F.R. § 3.601 (1986).

DSI's first contention, is that it was unreasonable for NIH to require potential offerors to show that they could expect to receive cooperation from state agencies because the membership of the AVRHS, a competitor for the award, consists of officials from those same agencies. We note that this requirement did not prevent DSI from submitting an offer, and, in fact, this requirement was not the basis for the agency's subsequent determination that DSI's offer was technically unacceptable. In any event, we will not consider this protest issue because DSI's protest on this basis is untimely.


Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), a protest, such as the one DSI raises, based on an alleged impropriety in a solicitation apparent before the closing date for receipt of initial proposals must be filed prior to that closing date. The closing date for receipt of initial proposals was January 16, 1987. DSI first protested the requirement in the solicitation to NIH on June 9, 1987. After NIH rebutted DSI's claim and also noted that the protest issue was untimely in a letter received by DSI on July 30, 1987, DSI filed a protest at GAO on August 10, 1987. DSI's protest of this issue was filed long after the proposal closing date and consequently, this basis for DSI's protest is untimely.


DSI's second basis for protest is without merit. The FAR provision at issue provides that "a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees." FAR, 48 C.F.R. § 3.601. DSI reads this provision as prohibiting NIH from awarding a contract to AVRHS, which is made up of officials of state and local health agencies. However, "Government" in the quoted language refers to the federal government, since the purpose of the policy is to avoid any actual conflict of interest that may arise between the government employee's interests as the contractor and his duties as a government employee and to avoid the appearance of favoritism by the government toward its current employees. See Big Sky Resource Analysis, et al., B-224888, et al., Jan. 5, 1987, 87-1 CPD ¶ 9.

Since we conclude that FAR, 48 C.F.R. § 3.601 does not apply to state employees or organizations of state employees, we find that award of a contract to AVRHS does not violate the provision. Furthermore, we are not aware of any law or regulation that would preclude such an award. Therefore, we

reject protester's contention that an award to AVRHS establishes an impermissible conflict of interest.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "R. Berger".

 Ronald Berger  
Deputy Associate  
General Counsel