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**DECISION**



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

FILE: B-206839

DATE: April 22, 1982

MATTER OF: SmithKline Clinical Laboratories

**DIGEST:**

Protest against solicitation specifications and award, filed with GAO more than 10 working days after both the closing date for receipt of proposals and the protester's receipt of the contracting agency's denial of its protest at that level, is untimely and will not be considered on the merits.

SmithKline Clinical Laboratories (SmithKline) protests against the award of a contract to BioScience Laboratories (BioScience) under request for proposals (RFP) No. DADA03-82-R-0001 issued by Fitzsimons Army Medical Center, Department of Pathology (Army), for testing services. SmithKline contends that the RFP unduly restricts competition by precluding subcontracting of the work, that only BioScience is able to fulfill the RFP requirements as stated, and that award to BioScience at a substantially higher price is improper because it was made without regard to the cost benefit factors specified in the RFP.

We find the protest to be untimely.

SmithKline initially protested to the Army prior to the November 13, 1981, closing date for receipt of proposals. Notwithstanding the protest, the Army received proposals as scheduled and made award to BioScience in November 1981. The protester met with the Army shortly after the contract was awarded and again on December 15, 1981, and January 4, 1982. On February 19, 1982, SmithKline received a response from the Army which essentially denied its protest. We received SmithKline's protest on March 24, 1982, which renders it untimely filed for our consideration on the merits.

Our Bid Protest Procedures require that where a protest has been filed with the contracting agency, any subsequent protest to our Office must be filed (received) within 10 working days after the protester receives notice of the agency's initial adverse action on the protest at that level, 4 C.F.R. § 21.2(a) (1981). The Army's receipt of proposals as scheduled without taking any action in response to SmithKline's protest constitutes the contracting agency's initial action adverse to its protest against the terms of the RFP, Mil-Air Engines & Cylinders, Inc., B-203659, October 26, 1981, 81-2 CPD 341, aff'd B-203659.2, November 30, 1981, 81-2 CPD 430. Such action requires the filing of a protest to our Office within 10 working days after the closing date. Assuming SmithKline protested after award the failure to apply the cost benefit factors in the evaluation, the Army's February 19, 1981, denial of SmithKline's protest was also adverse action for this basis of protest.

Since SmithKline did not protest to our Office within the required time following the closing date or the denial of its protest to the Army, its protest is clearly untimely on all grounds. Because the protester's initial submission is untimely, we have decided the matter on that basis without requesting a report from the contracting agency. SmithKline's request for a conference on the merits of the protest, pursuant to 4 C.F.R. § 21.7(a) (1981), is denied because a conference would serve no useful purpose. Waterbury Farrell, Division of Textron, Inc., B-203798, July 24, 1981, 81-2 CPD 60.

We dismiss the protest.

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