



Comptroller General  
of the United States  
Washington, D.C. 20548

*J. Westfall*

## Decision

**Matter of:** Neo Enterprises, Inc.  
**File:** B-241661  
**Date:** October 25, 1990

Joseph R. Zirretta for the protester.  
Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Untimely protest will not be considered pursuant to the "good cause" exception where protester does not demonstrate that some compelling reason beyond its control prevented it from filing a timely protest.

### DECISION

Neo Enterprises, Inc. protests the rejection of its bid under invitation for bids (IFB) No. M00681-90-B-0053, issued by the Marine Corps for various types of food service equipment. The agency rejected Neo Enterprises' bid for Lot III-Kettles (Item Nos. 15 through 24) as nonresponsive because the protester's descriptive literature failed to demonstrate compliance with several of the salient characteristics listed in the solicitation. Neo Enterprises contends that the kettles that it offered either met or exceeded all of the IFB's requirements.

We dismiss the protest as untimely.

Neo Enterprises argues first that the solicitation requirement for kettles of one piece deep drawn construction is restrictive of competition since most manufacturers now use a spinning (as opposed to a drawing) process in fabricating the kettles.

We dismiss this ground of protest as untimely since our Bid Protest Regulations require that a protest based on an alleged impropriety which is apparent from the face of an IFB be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1990). Any objection to the requirement for drawn construction therefore should have been raised prior to bid opening.

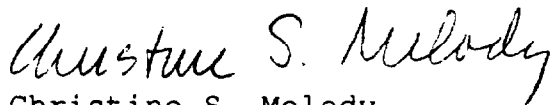
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The protester also argues that the agency incorrectly determined that its kettles failed to meet the solicitation requirements for a semi-deluxe finish exterior and 180 grit interior; for a two-piece hinged cover clamped on the rear section; and for a maximum working pressure of up to 30 pounds per square inch. Neo Enterprises concedes that these grounds of protest are untimely since they were not raised within 10 days after it learned of them, but requests that we consider them under the "good cause" exception to our timeliness requirements.

Our Office may consider an untimely protest where we find that good cause has been shown for the failure to file it timely. 4 C.F.R. § 21.2(b). We have defined "good cause" for purposes of the exception as being limited to those circumstances where some compelling reason beyond the protester's control prevented it from filing a timely protest. Oak Ridge Associated Univs.--Recon., B-238411.2, May 31, 1990, 90-1 CPD ¶ 513. Here, the protester argues that it was unable to file a timely protest because it is a dealer, rather than a manufacturer, of the equipment on which it bid, and as such, is unfamiliar with the "technical" characteristics of the items. According to Neo Enterprises, it had to forward the agency's letter of rejection to the manufacturer of the kettles "in order to get an accurate technical response" before protesting.

A dealer's lack of familiarity with the physical characteristics of the products that it offers does not constitute a compelling reason for waiving our timeliness requirements. Furthermore, even if the dealer thought it necessary to confer with the manufacturer, the protester has offered no explanation--and we see no reason--why this could not have been accomplished with sufficient promptness to permit the filing of a timely protest. We therefore decline to invoke the good cause exception here.

The protest is dismissed.

  
Christine S. Melody  
Assistant General Counsel