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DECISION



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

FILE: B-187380

DATE: October 6, 1976

MATTER OF: ARCO Medical Products Company

DIGEST:

Protest against allegedly restrictive specifications filed after date for submission of proposals is untimely and not for consideration; further, any protest against rejection of item proposed as not conforming with specifications would be untimely as not filed within 10 working days after agency notified offeror of rejection and reasons therefor.

The ARCO Medical Products Company (ARCMED) protests by letter of September 7, 1976, received by our Office on September 9, the rejection of its offer under National Institutes of Health (NIH) request for proposals No. 263-76-P-(83)-6194CC on the basis that the specifications were restrictive and thus failed to comply with section 1-2.101 of the Federal Procurement Regulations. ARCMED contends that the specifications were written in such a manner as to exclude all items except that manufactured by Coratomic Incorporated, the awardee.

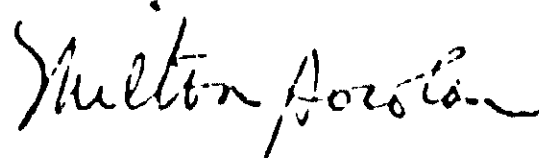
We have been advised by the NIH that award of the contract was made on June 22, 1976, that ARCMED called the contracting activity on or about July 1 to request the reasons for the award and for the rejection of its offer, that the formal notice of award was sent to ARCMED by letter of July 15, and that the first notice of any desire by ARCMED to protest the award was an ARCMED September 7 letter to the NIH.

Our Bid Protest Procedures, specifically 4 C.F.R. § 20.2(b)(1) (1976), require that any protest against alleged improprieties in a procurement specification which are apparent before the date for the submission of proposals must be filed prior to that date. ARCMED did not file its protest in accordance with this requirement. Further, even if ARCMED should contend that its item was improperly rejected under the specifications, 4 C.F.R. § 20.2(a) requires that a protest must be

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filed within 10 working days of the day the protester receives the formal notification of the initial adverse agency action or of the date that actual or constructive knowledge thereof was acquired. ARCMED knew of the award to one other than itself on July 1 at the latest. It was further advised on that date of the reasons for the rejection of its proposed item, and this information was again afforded to ARCMED by the NIH letter of July 15. Consequently, the filing of a protest by letter of September 7 with the NIH and with our Office is clearly not within 10 working days of the time ARCMED acquired knowledge of the initial adverse agency action.

Accordingly, the protest is untimely filed and not for our consideration.

for 
Paul G. Dembling
General Counsel