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Paul Sherry
Proc. II

DECISION



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

FILE: B-188393

DATE: March 3, 1977

MATTER OF: InterRoyal Corporation

DIGEST:

Protest alleging ambiguous specifications is untimely where basis for protest was apparent from invitation for bids but protest was not filed until after bid opening.

The Veterans Administration Hospital, Pittsburgh, Pennsylvania (Veterans Administration) has forwarded to our Office pursuant to section 1-2.407-8(b)(3) of the Federal Procurement Regulations (FPR) (1964 ed.) the protest of InterRoyal Corporation (InterRoyal) in connection with invitation for bids (IFB) 646-18-77. Award has been withheld pending a decision from this Office.

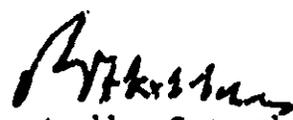
Through issuance of the subject solicitation the Veterans Administration sought bids on a quantity of dormitory beds with two drawers and wardrobe divider units in accordance with specifications as set out in the IFB. Bids were opened on December 28, 1976, at which time it was determined that National Metals Industries (National) had submitted the lowest bid. On that same date, after bid opening, InterRoyal protested on the grounds that the specifications were ambiguous. Specifically, InterRoyal claims that the requirement for "laminated plastic" contained on page 5 of the IFB should have indicated the type of laminated plastic to be used. It is further asserted that the requirement for "Materials to be Class A Flame Spread Rated" and the particular manufacturer's model number which were also referenced on page 5 should have contained more specific information.

Our Bid Protest Procedures, 4 CFR 20.2(b)(1) (1976), require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. InterRoyal has informed our Office that prior to bid opening it had unsuccessfully sought to contact a Veterans Administration representative by phone, apparently in an attempt to obtain certain information with respect to the specifications. However, the record indicates that InterRoyal did not actually protest to the Veterans

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Administration until after bid opening. Therefore, the protest is untimely and not for consideration on the merits.

In view of the foregoing the protest is denied and award should be made to National, if otherwise proper.


Acting Comptroller General
of the United States



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

Robert Little
Vice. II.

2-187407

MAR 3 1977

Mr. William Robinson
Acting Deputy Administrator
General Services Administration

Dear Mr. Robinson:

Enclosed is a copy of our decision relative to the protest of Primar Construction Co., Inc., against award to another bidder under IFB SM-003-02815. This matter is the subject of a report from your General Counsel dated December 1, 1976.

Although we have denied the protest, we recommend that the language prescribed by FPR 1-18.104, which is in clause 32 of GSA Form 1139 (the "Performance of Work by Contractors" clause) be clarified. As noted by your Acting General Counsel, the clause is susceptible of more than one interpretation as to the way in which calculation of the percentage of work the contractor is required to perform with its own forces is to be made.

Please advise us of any action taken.

Sincerely yours,

R.F. KELLER

Acting
Comptroller General
of the United States

Enclosure