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DECISION



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

FILE: B-204855

DATE: April 20, 1982

MATTER OF: Borg-Warner Health Products, Inc.

DIGEST:

21561

Protest alleging that specifications are unduly restrictive is untimely where protest was initially filed with agency before proposal due date but protest to GAO was filed more than 10 working days after initial adverse agency action on protest (receipt of proposals without amending solicitation).

Borg-Warner Health Products, Inc. protests request for proposals (RFP) No. F49642-81-R-0378 issued by the Washington Area Contracting Center, Andrews Air Force Base, for manual and electric hospital beds and accessories. Borg-Warner contends that the specifications included in the RFP are excessively restrictive and limit competition to only one firm.

Although it was not apparent from the protester's initial submission, further development of the case has shown it to have been untimely filed and therefore it is dismissed.

Borg-Warner's protest concerns alleged improprieties in the solicitation apparent prior to the closing date for receipt of initial proposals. Therefore, under our Bid Protest Procedures, it was incumbent upon Borg-Warner to file its protest prior to that time. 4 C.F.R. § 21.2(b)(1) (1981). If such a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a). The term "filed" means receipt in the General Accounting Office. 4 C.F.R. § 21.2(b)(3).

Here, the closing date for receipt of proposals was August 21, 1981. Borg-Warner submitted a protest to the contracting agency on August 18, 1981, and intended that

our Office receive a copy of that protest. However, the copy intended for our Office was addressed incorrectly, and was in fact received by the contracting agency. By letter of August 21, the agency denied the protest. It proceeded to receive proposals as scheduled and returned to Borg-Warner the copy of its protest intended for our Office. By letter of September 14, which we received the following day, Borg-Warner brought to our attention its earlier protest to the contracting agency and requested that our Office take "the necessary action regarding this matter."

Prior to the due date for receipt of proposals, the only protest which had been filed was with the contracting agency. Even if the copy of that protest intended for our Office had not been misaddressed, and we had received it prior to the due date, that would not have constituted the filing of a protest with our Office. We have repeatedly held that our receipt of a copy of a letter which is addressed to the contracting agency and which does not request a ruling by the Comptroller General does not constitute the filing of a protest to our Office. See, e.g., EDP Associates, Inc., B-194680, August 30, 1979, 79-2 CPD 229; Raycomm Industries, Inc., B-192616, September 25, 1978, 78-2 CPD 229. Therefore, the protest must be considered to have been filed in our Office on September 15.

Since the agency did not send Borg-Warner the letter denying its protest until the closing date for the receipt of initial proposals, the agency's receipt of proposals without amending the solicitation to change the specifications constituted the initial adverse agency action on Borg-Warner's protest. See Security Assistance Forces & Equipment International, Inc., B-198219, October 8, 1980, 80-2 CPD 255. Therefore, in order to have complied with the time requirements, Borg-Warner had to have filed its protest with this Office within 10 working days of August 21, the closing date for the receipt of proposals. Since the filing date of September 15 is more than 10 working days after Borg-Warner knew of the adverse agency action, the protest is untimely under section 21.2(a).

The protest is dismissed.

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