

DECISION

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

FILE: B-209373

DATE: November 8, 1982

MATTER OF: Med-E-Jet Corp.

DIGEST:

Protest filed with GAO more than 10 working days after protester knew, or should have known, basis for protest (technical unacceptability of offered items) is untimely.

Med-E-Jet Corp. (Med-E-Jet) protests the Defense Logistic's Agency's (DLA) rejection of its low offer for a mass inoculation device, under solicitation No. DLA 120-82-R-2079, issued by Defense Personnel Support Center, Philadelphia, Pennsylvania.

DLA advised Med-E-Jet by letter dated August 23, 1982, that the item offered by Med-E-Jet was technically unacceptable in that it did not conform to applicable military specifications. The specifications require a foot-operated hydraulic power source while Med-E-Jet offered a gas pressure power source. Med-E-Jet does not contest its nonconformance to the engineering specifications; rather, it urges that its product is technically superior and costs almost 60 percent less than the awardee's product. However, we have long held that technically unacceptable offers are ineligible for award irrespective of cost. See Science Applications, Inc., B-193229, May 23, 1979, 79-1 CPD 369. The issue then is the technical acceptability of the Med-E-Jet mass inoculation devices and this issue is untimely raised.

Our Bid Protest Procedures require that bid protests must be filed no later than 10 working days after the basis for protest is known, or should have been known, whichever is earlier. 4 C.F.R. §21.2(b)(2) (1982). The DLA letter of August 23, 1982, put Med-E-Jet on notice of the technical unacceptability of its offer. We did not receive Med-E-Jet's protest until October 1, 1982, which is 28 working days after the date of the DLA letter. Allowing 5 working days for Med-E-Jet's receipt of the letter, the protest should have been filed by September 14, 1982.

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Consequently, Med-E-Jet's protest is untimely . Gary's Disposal, Inc., B-207864, July 23, 1982, 82-2 CPD 72.

The protest is dismissed.

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