

DECISION

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

FILE: B-185910

DATE: May 11, 1976

MATTER OF: Micronics International Inc.

DIGEST:

Protest filed more than 10 working days after oral denial of agency protest is untimely, and not for consideration on merits, since protest was not filed within 10 working days of protester's actual knowledge of "initial adverse agency action." Written confirmation of oral advice denying protest does not extend period for filing protest.

By letter dated February 12, 1976, Micronics International Inc. protested the rejection of its proposal under request for proposals (RFP) N00019-76-R-0024, issued by the Naval Air Systems Command, Washington, D. C. The RFP called for a quantity of safety and arming devices for the Sparrow Missile. Competition under the RFP was intended to be restricted to the two planned industrial mobilization base producers of the item designated in Class Determinations and Findings (D&F) 76-15. See 10 U.S.C. § 2304(a)(16) (1970); Armed Services Procurement Regulation § 3-216 (1975 ed.). However, instead of indicating the D&F's restrictions, the notice of the procurement in the Commerce Business Daily (CBD) incorrectly stated that the procurement was restricted to the two firms because only those firms had the technical capabilities of meeting the RFP's mandatory delivery requirements. The RFP also did not show this restriction on competition.

By the closing date for receipt of proposals, January 16, 1976, proposals were received from the two "planned producers" and Micronics. On January 23, 1976, the Navy informed Micronics that its proposal could not be considered because the procurement was limited to the "planned producers." By letter dated January 26, 1976, Micronics protested and requested reconsideration of this determination by the Navy. In response to this letter, Micronics was informed by telephone on January 28, 1976, that its proposal would not be considered because of the D&F's restriction on competition, notwithstanding the RFP's failure to note this restriction. The substance of this telephone conversation was confirmed by the Navy in a letter dated February 2, 1976, which was received by Micronics on February 6, 1976. Micronics' subsequent protest to our Office was sent by certified mail on February 12, 1976, and was received on February 17, 1976.

Micronics protests that the procurement was improperly restricted to the two "planned producers." Micronics states that the Class D&F was grossly erroneous in finding that there was no known supplier other than the "planned producers" who had the ability to manufacture this item. Micronics asserts that it also has the requisite capability to produce this item as demonstrated by its successful production of related items over the past 4 years. (We note that the Class D&F does not say the "planned producers" were the only firms capable of producing the item. Rather, the D&F found that the production capacities of the two "planned producers" would be required in case of national emergency to meet the planned mobilization requirements, which justified restricting competition for the item to the two firms.)

Section 20.2(a) of the Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), states in pertinent part:

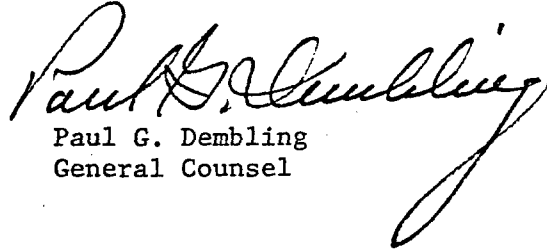
"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered * * *" (Emphasis supplied.)

Micronics was initially advised of the complete basis for the denial of its protest to the Navy on January 28, 1976. The letter of February 2, 1976, confirming the oral advice given Micronics, was not the "initial adverse agency action" on Micronics' protest, and did not extend Micronics' period for filing a timely protest with our Office. Also, there is no indication that the Navy advised Micronics in the telephone conversation that the protest would be considered further or that the reasons for denying Micronics' protest would be detailed in a subsequent letter. Contrast Torotron Corporation, B-182418, January 30, 1975, 75-1 CPD 69; S. Puma & Company, Incorporated., B-182936, April 17, 1975, 75-1 CPD 230. Consequently, since Micronics did not file its protest in our Office within 10 working days of actual knowledge of the initial adverse agency action, the protest to our Office must be considered untimely. See International Research Associates, B-182344, May 8, 1975, 75-1 CPD 285;

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CSH Contractors, Inc., B-183976, June 5, 1975, 75-1 CPD 342;
Verne Woodrow Contractor, Inc., B-184921, October 28, 1975,
75-2 CPD 259; Homemakers Health Aide Service of the National
Capital Area, Inc., B-185924, March 26, 1976, 76-1 CPD 200.

In view of the foregoing, Micronics' protest will not be considered on the merits.


Paul G. Dembling
General Counsel