

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

FILE: B-186870

DATE: July 29, 1976

MATTER OF: Banner Inc.

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DIGEST:

1. Where protest is not filed with GAO within 10 working days of formal notification of initial adverse agency action, protest is untimely filed and not for consideration; further, protest of matters dealing with invitation specifications, apparent on face of invitation, must be filed prior to bid opening to be considered timely.
2. Contracting officer's determination that bidder is nonresponsible is regarded as affirmed by Small Business Administration's denial of certificate of competency.

Banner Inc., by letter of June 30, 1976, received by our Office on July 2, protests its failure to receive award under invitation for bids No. DAAK01-76-B-5187, issued by the United States Troop Support Command, St. Louis, Missouri. Banner Inc. was not awarded the contract in view of the contracting activity's determination that the firm was a nonresponsible bidder and in view of the fact that the Small Business Administration (SBA) would not issue a certificate of competency (COC) to the firm. Certain portions of the specifications are also protested.

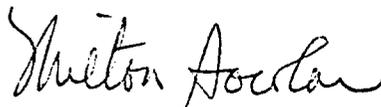
Our Bid Protest Procedures, specifically 4 C.F.R. § 20.2(a) (1976), require that a protest must be filed within 10 working days of the day that the protester receives the formal notification of the initial adverse agency action on its protest to the agency. If a protest is filed after this time period has elapsed, it must be considered untimely and not for consideration. Banner Inc. protested the May 27, 1976, award. By letter of June 10 to the protester the procurement activity denied the protest. Banner Inc. received that letter on June 14. The July 2 receipt by our Office of the Banner Inc. protest was more than 10 working days after the firm received formal notice of the adverse agency action. Accordingly, we must find the protest to have been filed untimely

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with our Office and thus not for consideration. Also, as regards any protest against a procurement specification, 4 C.F.R. § 20.2 (b)(1) provides that protests against any alleged improprieties in the invitation which are apparent before bid opening must be protested prior to bid opening.

Further, under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC. Our Office has no authority to review SBA determinations or to require the SBA to issue a COC (see Environmental Tectonics Corporation, B-185259, February 13, 1976, 76-1 CPD 101), although we have requested SBA to reopen a case where information materially affecting the determination of nonresponsibility was not taken into consideration, Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31; Kepner Plastics Fabricators, Inc., et al., B-184451, B-184394, June 1, 1976. Instead, our Office has held that when a bidder is denied a COC, the contracting officer's determination of nonresponsibility must be regarded as having been affirmed by the SBA even though the denial may have been made for reasons other than those relied on by the contracting officer in his nonresponsibility determination. Marine Resources, Inc., B-179738, February 20, 1974, 74-1 CPD 82.

Accordingly, the protest is denied.

for 
Paul G. Dembling
General Counsel