

DECISION



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

FILE: B-208337

DATE: August 18, 1982

MATTER OF: Surgical Instrument Company of America

DIGEST:

Protest is dismissed as untimely filed under 4 C.F.R. § 21.2(a) (1982), because the protester filed the protest with GAO more than 10 working days after notice of the initial adverse action. The protester's further appeal of the adverse action to the Assistant Deputy Administrator of the Veterans Administration does not extend the time to file a protest with GAO.

Surgical Instrument Company of America (SICOA) protests the award of a contract to Sybron Corporation by the Veterans Administration (VA) under VA contract M1-45-82. We dismiss the protest as untimely under our Bid Protest Procedures.

By letter dated April 29, 1982, SICOA protested to VA the award of the contract to Sybron Corporation, the next highest bidder. SICOA contended that the VA had failed to objectively evaluate its bid sample, and disagreed with the VA's rejection of its sample as "unacceptable." SICOA submitted with its protest to our Office a letter, dated May 19, 1982, to the VA in which SICOA acknowledges that the VA advised SICOA on May 14, 1982, that its protest to the VA was dismissed as untimely. In the May 19 letter, SICOA indicated it disagreed with the VA ruling that its protest was untimely, but stated it would "refrain from further action" until after meeting with VA officials on May 25, 1982. On May 21, 1982, SICOA appealed the initial adverse agency action to the VA Assistant Deputy Administrator, Procurement and Supply. In a letter dated July 15, 1982, received here on July 22, 1982, SICOA protested to our Office, raising essentially the same objections that were contained in its initial protest to the agency April 29, 1982.

Under our Bid Protest Procedures, if a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of notification of initial adverse agency action, 4 C.F.R. § 21.2(a) (1982). Since the protester was advised on May 14, 1982, that its protest to VA was dismissed as untimely, this constituted the initial adverse agency action. Further, we have held that a protester's continued pursuit of its protest with the contracting agency, despite the initial rejection of its protest, does not extend the time or obviate the necessity for filing a protest with our Office within 10 working days of initial adverse agency action. HCS, Inc., B-204960.2, March 23, 1982, 82-1 CPD 275; Irvin Industries, Inc., B-204786, October 5, 1981, 81-2 CPD 277.

Accordingly, since SICOA's protest to our Office was not filed within 10 working days after SICOA received notice of the initial dismissal of its protest, SICOA's protest is untimely and will not be considered on the merits.

We dismiss the protest.

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