



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Silcraft Corporation
File: B-226605.2
Date: September 23, 1987

DIGEST

1. Protest which is initially untimely filed with the contracting agency will not be considered by the General Accounting Office. Protesters are charged with constructive knowledge of Bid Protest Regulations and lack of familiarity with filing requirements is not a defense to dismissal of a protest as untimely.
2. General Accounting Office does not consider challenges to small business size status because the Small Business Administration has conclusive authority to decide such matters.

DECISION

The Silcraft Corporation protests the award of a contract for medical equipment and supplies under solicitation No. M3-Q3-86, issued by the Veterans Administration (VA) as a small business set-aside. Silcraft contends that VA improperly denied it the contract because its production facility did not have a Food and Drug Administration (FDA) number. Silcraft also contends that the award of the contract to Arjo Hospital Equipment, Inc. was improper because Arjo is not a small business.

We dismiss the protest.

In a letter dated April 8, 1987, the contracting officer notified Silcraft that it was not eligible for award due to its failure to comply with FDA registration requirements. The VA did not receive Silcraft's protest, dated August 7, until August 13. The contracting officer notified Silcraft that its protest was untimely since it had not been filed within 10 working days after the basis of the protest was known, as required by the Veterans Administration Acquisition Regulations. The VA dismissed Silcraft's protest.

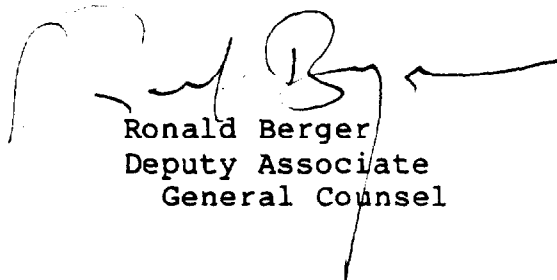
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Our Bid Protest Regulations provide that where a protest is initially filed with the contracting activity, it must be timely filed there in order for our Office to consider a subsequent protest to us as timely. 4 C.F.R. § 21.2(a)(3) (1987); Carolina Parachute Corp., B-226552.2, July 16, 1987, 87 CPD ¶ 51. Silcraft's initial protest to VA was untimely because it was not filed until August 13, more than 10 working days after April 8. Our regulations, as well as the VA's, require a protest to be filed within 10 working days of when the basis for protest is known. See 4 C.F.R. § 21.2(a)(2).

The solicitation's lack of information on how to file a protest or on the protest time limits does not, as Silcraft argues, excuse that firm from compliance with those rules. Prospective contractors are on constructive notice of our regulations, since they are published in the Federal Register and the Code of Federal Regulations. Ogden Allied Services Corp.--Reconsideration, B-224692.2, Oct. 20, 1986, 86-2 CPD ¶ 471. The fact that Silcraft was not familiar with filing requirements is not a defense to dismissal of its protest as untimely.

Silcraft's other contention concerns the status of Arjo Hospital Equipment as a small business. Our Office does not consider small business size status determinations since the Small Business Administration (SBA) has conclusive statutory authority to make that determination for federal procurement purposes. 4 C.F.R. § 21.3(f)(2). Detroit Armor Corp.--Reconsideration, B-227432.2, July 9, 1987, 87-2 CPD ¶ 25. In fact, the contracting officer advised Silcraft that the matter had been referred to the SBA for consideration and Silcraft would be informed of the SBA's determination as soon as review was completed.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel