

Sklarew



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chemical Specialists & Development

File: B-238422.2

Date: July 17, 1990

Steve Cook, for the protester.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency is not required to terminate award to firm where, in
response to untimely protest of Small Disadvantaged Business
(SDB) status of the awardee under an SDB set-aside, the
Small Business Administration finds awardee is not an SDB.

DECISION

Chemical Specialists & Development (CSD) protests the award
of a contract by the Defense Logistics Agency (DLA) to
Packaging Service Company, Inc. under invitation for bids
(IFB) No. DLA400-90-B-0345, a small disadvantaged business
(SDB) set-aside. CSD alleges that because this solicitation
was restricted to SDB concerns, and Packaging was determined
not to be an SDB by the Small Business Administration (SBA),
award to Packaging was improper.

We dismiss the protest.

Bids were opened on September 20, 1989. CSD first filed its
protest against Packaging's SDB status on January 25, 1990,
apparently when it was notified of award by the agency.
The matter was referred to the SBA, and by letter of
March 14, the SBA found that Packaging did not qualify as an
SDB. The contracting officer subsequently advised CSD that
she would not take corrective action since award had been
made and work was being performed.

The Department of Defense Federal Acquisition Regulation
Supplement (DFARS) § 219.301 (DAC 88-14) provides the
procedures for protesting the disadvantaged status of an
offeror. The regulation states that to apply to the
acquisition in question, an offeror's protest must be filed

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with and be received by the contracting officer prior to the close of business on the fifth business day after the bid opening date. DFARS § 219.302(2). Here, bids were opened on September 20, 1989, and CSD's initial protest to the contracting officer concerning the SDB status of the awardee was dated January 25, 1990. Since CSD's protest against Packaging's SDB eligibility was not timely filed, we have no basis to object to the agency's refusal to apply the SBA's ruling to the instant procurement.


for Ronald Berger
Associate General Counsel