

Formica



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Omega Electronics

**File:** B-240622

**Date:** November 21, 1990

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Nitin Shah for the protester.  
Michael Trovarelli, Esq., for Defense Logistics Agency, and  
David R. Kohler, Esq., for the Small Business Administration,  
for the agencies.  
John Formica, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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## DIGEST

Protest against the Small Business Administration's (SBA) refusal to issue certificate of competency (COC) is untimely when not filed in General Accounting Office within 10 days of the protester's receipt of notice from SBA declining to issue a COC.

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## DECISION

Omega Electronics protests the Small Business Administration's (SBA) failure to issue it a certificate of competency (COC) in connection with request for proposals (RFP) No. DLA120-90-R-9000, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, for five gallon bottles with screw caps.

We dismiss the protest.

DPSC concluded that Omega was not a responsible prospective contractor based on its determination that Omega did not have satisfactory production capability as evidenced by its poor performance on current contracts. DPSC also concluded that Omega was ineligible for award because it found that Omega was not a "regular dealer" of the item offered as required by the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1988).

OSM 1142703

Because Omega is a small business, DPSC referred its nonresponsibility determination to the SBA under its COC procedures, as required by 15 U.S.C. § 637(b)(7) (1988).

SBA informed Omega by letter dated June 12, 1990, which Omega reports it received 2 to 3 days later, that it had declined to issue Omega a COC. This letter explained that the bases of the SBA's decision were: (1) Omega's less than satisfactory past and present performance on government contracts; (2) its failure to submit information sufficient to ensure that the solicitation's delivery schedule would be met; and, (3) the firm's failure to demonstrate that it was a regular dealer of the item offered.

DPSC, after being informed by SBA of its decision to deny Omega a COC, made award to another firm on June 27. The protester reports that it received the notice of award on July 18..

Omega filed its protest with our Office on July 31, contending that bias had entered into SBA's decision to deny Omega a COC, and that certain facts concerning Omega's responsibility and status as a regular dealer had been overlooked.

We find Omega's protest to be untimely. Under our Bid Protest Regulations, a protest must be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1990). Omega received notice of the SBA's decision to deny it a COC 2 to 3 days after June 12. Since Omega's protest is based on the SBA's denial of the COC, for the protest to be timely filed, Omega would have had to file within 10 working days of its receipt of this notice. However, because Omega did not do so until July 31, more than a month later, its protest is untimely and will not be considered. Calculus, Inc., B-232242.2, Oct. 13, 1988, 88-2 CPD ¶ 351.

The protest is dismissed.



John Brosnan  
Assistant General Counsel