

DECISION



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

60310

FILE: B-185068

DATE: December 18, 1975

MATTER OF: Neoweld Corporation

099418

DIGEST:

Where contracting officer denied protest on September 4, 1975, but protester did not file protest with GAO until October 7, 1975, protest is untimely under § 20.2(a) of GAO Bid Protest Procedures, since it was filed more than 10 working days after protester received notification of initial adverse agency action.

Neoweld Corporation (Neoweld) protests the award of a contract to Duraline, a division of J. B. Nottingham Company, the low bidder under total small business set-aside solicitation No. N00600-75-B-0172, issued by the Naval Regional Procurement Office, Washington, D.C.

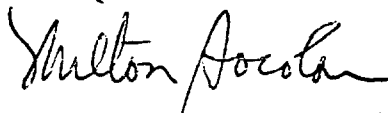
Initially, Neoweld protested to the contracting officer the low bidder's small business size status. By letter of August 4, 1975, the contracting officer informed Neoweld that its protest was untimely filed, and that the matter had been forwarded to the Small Business Administration for consideration in future actions. Neoweld protested this position as to the timeliness of its size protest in a letter dated August 5, 1975, to the contracting officer. We have been advised that the contracting officer denied Neoweld's protest as to the timeliness of its size protest in an undated letter sent on September 4, 1975. (The Philadelphia Regional Office of the Small Business Administration informed Neoweld on August 13, 1975, that Duraline's subcontractor did not qualify as a small business concern.)

Neoweld's protest to this Office involves the threshold question of the timeliness of its small business size status protest filed with the contracting officer. It believes that its size status protest was timely and that the award to Duraline was improper.

Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) provides that:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. (Emphasis added.)

The contracting officer initially denied Neoweld's protest regarding the timeliness of its size status protest in an undated letter sent on September 4, 1975. However, the instant protest to this Office was not filed until October 7, 1975. Accordingly, Neoweld's protest was not timely filed within 10 working days, as required by our procedures, and the matter, therefore, is dismissed.


for Paul G. Dembling
General Counsel