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## DECISION



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

FILE: B-195455

DATE: August 8, 1979

MATTER OF: Ordnance Specialties DLG02538

*[Untimely Protest of Preaward Facilities Survey]*

## DIGEST:

Protest filed with GAO more than 10 working days after: (1) initial adverse agency action on protest filed earlier with agency (notice of award to competitor); and (2) knowledge of basis of protest (award to competitor notwithstanding pending protest) is untimely and not for consideration on merits.

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Ordnance Specialties (OS) protests the Army's award of a contract to Chrysler Corporation (Chrysler), under invitation for bids (IFB) No. DAAE07-79-B-A357. OS states three grounds of protest: (1) inadequacy of the preaward survey of its facilities; (2) the agency's failure to formally respond to OS's protest; and (3) award of the contract to Chrysler notwithstanding OS's protest to the agency.

By letter of May 14, 1979, OS protested to the Army the preaward survey of its facilities. The matter was referred to the Small Business Administration (SBA) for resolution under 15 U.S.C. § 637(b)(7) (1976 & Supp. I 1977), which vests in the SBA authority to issue or deny certificates of competency (COC). The Army advises that on June 5, 1979, it was notified by SBA that OS was denied a COC. On June 7, 1979, the Army made award to Chrysler. The Army reports that OS was advised of the award on the same day that it was made.

Our Bid Protest Procedures read in part as follows:

"§ 20.2 Time for filing.

"(a) Protesters are urged to seek resolution of their complaints initially

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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 \* \* \*

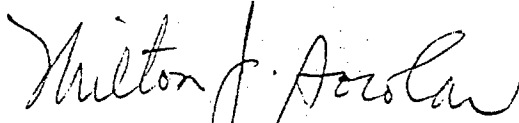
"(b)(1) \* \* \*

"(2) \* \* \* bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

"(3) The term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt. \* \* \*"  
4 C.F.R. § 20.2(a), (b)(2) & (b)(3).  
(1979).

OS was notified on June 7, 1979, that the Army had awarded the contract to Chrysler notwithstanding OS's protest. In our view, notification of the award constituted initial adverse agency action with regard to OS's protest to the agency concerning this preaward survey, indicated no formal response was forthcoming, and provided the basis for the third ground of protest. Since OS's protest was filed on July 17, 1979, more than 10 working days thereafter, the protest is untimely and will not be considered on its merits.

In any event, we note that as a general rule GAO does not review SBA's COC determinations absent a prima facie showing of fraud or willful disregard of facts, which is not the case here. See Old Hickory Services, B-192906.2, February 9, 1979, 79-1 CPD 92.



Milton J. Socolar  
General Counsel