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DECISION



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

FILE: B-204076

DATE: August 12, 1981

MATTER OF: American Overseas Industries

DIGEST: Protest filed (received) in GAO more than 10 working days after protester receives notification of adverse agency action (award to another bidder) on protest initially filed with agency is dismissed as untimely.

American Overseas Industries (AOI) protests the award of a contract to C & C Chemical Group, Inc. (C & C), for certain chemicals under solicitation No. DLA400-81-B-2475 issued by the Defense Logistics Agency (DLA). AOI protests that its bid was improperly rejected as nonresponsive. AOI asserts that the awardee falsely certified that the material it would supply would be furnished by a small business manufacturer and further that the awardee will not supply a conforming product.

Bid opening took place on March 31, 1981. On April 2, 1981, AOI received notification from DLA that its bid had been rejected as nonresponsive. AOI protested this determination to DLA by letter dated April 3, 1981. On June 8, 1981, AOI received notification from DLA that AOI's bid had been rejected and that award had been made to C & C. After a telephone conversation with the DLA buyer on June 24, 1981, AOI protested to our Office by letter dated June 26, 1981.

Our records do not indicate receipt of that letter. After a telephone inquiry by AOI on July 15, 1981, a protest telegram from AOI indicating that a copy of the letter was being sent was filed (received) in our Office on July 17, 1981. A copy of the letter was eventually received in our Office on July 22, 1981.

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Our Bid Protest Procedures require that protests initially filed with the contracting agency will only be considered by our Office if they are filed within 10 working days of the protester's learning of initial adverse agency action. 4 C.F.R. § 21.1(a) (1981). An agency's award of a contract notwithstanding the agency's receipt of a protest constitutes such adverse agency action. M & M Welding & Fabricators, B-202404, March 30, 1981, 80-1 CPD 238.

The protest to our Office was untimely filed since receipt of notice of award in the face of a pending protest was adverse agency action and the protest was not received until July 17, 1981. Even if the original letter had been received in our Office it would have been untimely since the 10 working days expired on June 22, 1981, while the protest letter was dated and allegedly sent on June 26, 1981.

Moreover, as concerns the protest against the awardee, the Small Business Administration is empowered by 15 U.S.C. § 637(b)(6) (1976) to conclusively determine questions of small business status for Federal procurement purposes. Chipman Van & Storage, Inc., B-188917, October 18, 1977, 77-2 CPD 299.

The protest is dismissed.



For Harry R. Van Cleve
Acting General Counsel