

Mrs. Gilhooly



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Scientific Instrument Center, Inc.

File: B-223429

Date: August 21, 1986

DIGEST

A protest not filed within 10 working days after the protester was orally advised its agency level protest was denied is untimely and will not be considered on the merits.

DECISION

Scientific Instrument Center, Inc. (SIC), protests the Veterans Administration's (VA) exclusive use of reagents from Beckman Instruments, Inc. (Beckman), at the VA Outpatient Clinic in Columbus, Ohio. SIC alleges that it is a small business which can supply reagents equivalent to Beckman's, but 28 percent less expensive.

We dismiss the protest as untimely.

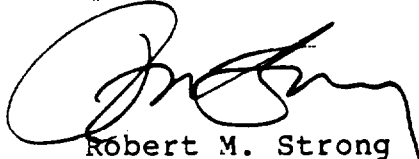
The record indicates that this matter has been the subject of discussions since September 21, 1985, when the VA awarded a contract for reagents to Beckman, and that SIC protested to the VA by letter dated March 24, 1986. SIC's letter to the VA constituted an agency protest because it expressed dissatisfaction with VA's procurement practices and requested corrective action. Reeves Brothers Inc.; H. Landau & Company, B-212215.2; B-212215.3, May 2, 1984, 84-1 C.P.D. ¶ 491. SIC was informed during a telephone conversation some time prior to May 27, 1986, that the VA decided to "remain with Beckman reagents for the laboratory." SIC protested to our Office on June 19, 1986.

Our Bid Protest Regulations provide that if an initial protest has been timely filed with the contracting agency, we will consider a subsequent protest to this Office that is filed within 10 days after the protester has formal notification of or actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1985). Here, initial adverse agency action occurred when

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the VA informed SIC prior to May 27, 1986, that it would "remain with Beckman reagents." Since SIC did not protest to our Office until June 19, 1986, its protest is untimely and will not be considered. Blinderman Construction Co., Inc., B-222523, June 16, 1986, 86-1 C.P.D. ¶ 554.

SIC comments that it was not advised about timeliness requirements by the VA, and that it filed its protest with GAO when all avenues of attempting a change in VA policy were exhausted. However, we consistently have held that a protester's lack of knowledge of our regulations is no defense to a dismissal since our regulations are published in the Federal Register, and protesters are charged with constructive notice of their contents. R-A-L Mechanical Inc., B-221180.2, Dec. 27, 1985, 85-2 C.P.D. ¶ 726. Moreover, the fact that a protester continues to pursue its complaint with the contracting agency does not toll the period for filing with our Office. Shelf Stable Foods, Inc.--Request for Reconsideration, B-222016.2, Mar. 10, 1986, 86-1 C.P.D. ¶ 237.



Robert M. Strong
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