

DECISION

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

FILE: B-218477.2 **DATE:** October 8, 1985
MATTER OF: Delta Coals, Inc.

DIGEST:

A protest not filed in the General Accounting Office within 10 working days after the protester was orally advised of the basis of its protest is untimely and will not be considered on its merits.

Delta Coals, Inc. protests the rejection of its bid as nonresponsive by the Defense Logistics Agency under invitation for bids (IFB) No. DLA600-85-B-0020, a solicitation to obtain coal. Delta's bid was rejected because the agency claims it could not determine from the bid and other information available from the Department of the Army and the Department of Energy that the coal Delta offered would comply with the IFB's detailed specifications with respect to such matters as moisture, carbon, hydrogen, sulfur and ash content.

We dismiss this protest as untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985) which require that protests be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier.

We received Delta's protest on August 13. On July 29, Delta was informed by telephone that its low bid had been rejected as nonresponsive for failure to meet the specification's minimum ash specification. In its comments on the agency's report, Delta conceded that it had been informed by telephone on July 29 that its bid was nonresponsive but insists that it protested within 10 days after receiving the letter confirming the rejection that it had requested from the agency.

Delta is mistaken in its apparent belief that the 10 working-day period did not begin to run until its receipt of the letter confirming the oral notice of July 29.

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On the contrary, an oral notification of the basis of protest is sufficient to start the 10 working-day period and a protester may not delay filing its protest until receipt of written confirmation if such delay would result in its protest being filed after the 10 working day oral notification. Koenig Mechanical Contractors, Inc., B-217571, Apr. 4, 1985, 85-1 CPD ¶ 389.

Therefore, as Delta's protest was received on the eleventh working day after it was notified of the rejection of its bid, it is untimely and will not be considered on its merits.


for Ronald Berger
Deputy Associate
General Counsel