



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Thermo Seal Buildings, Inc.--Request for  
Reconsideration

**File:** B-235704.2

**Date:** June 29, 1989

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### DIGEST

Request for reconsideration of protest that was dismissed as untimely is denied where the protest was filed with the General Accounting Office more than 10 working days after the basis for the protest should have been known.

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### DECISION

Thermo Seal Buildings, Inc., requests reconsideration of our June 1, 1989, dismissal of its protest as untimely. Thermo Seal contends that we misinterpreted the basis of its protest, challenging the Department of Energy's (DOE) award of a contract under invitation for bids (IFB) No. DE-FB65-89WK06371, and that its protest in fact was timely.

We deny the request for reconsideration.

DOE issued the solicitation on March 17, 1989, to procure eight prefabricated microwave equipment shelters. By letter dated April 8, Thermo Seal asked DOE for an explanation of the alleged ambiguities in the technical specifications. DOE proceeded with bid opening on April 21, without having responded to Thermo Seal's letter. Thermo Seal then filed its protest with our Office on May 30, after receiving notice that award had been made to another bidder.

Because Thermo Seal's protest appeared to focus in large part on certain deficiencies Thermo Seal perceived in the specifications, we interpreted the protest as raising alleged improprieties in the IFB. Since under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), such protests must be filed before bid opening, and Thermo Seal's protest was not filed until after award had been made, we dismissed the protest as untimely. In its reconsideration request, Thermo Seal states that its protest in fact challenged only DOE's failure to respond before bid opening to its request for clarification of the specifications, not

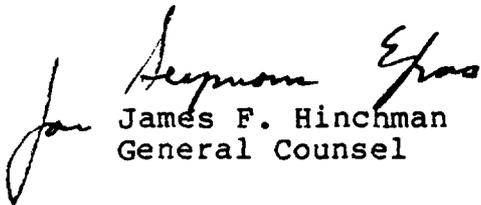
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the allegedly defective specifications themselves. Even under this interpretation, however, the protest is untimely.

Our Bid Protest Regulations require that bid protests be filed within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, DOE proceeded with bid opening on April 21 without responding to Thermo Seal's April 8 letter requesting clarification. Thermo Seal, therefore, should have known as of bid opening that the agency was not going to clarify any of the ambiguities the protester raised in its letter. Since Thermo Seal was on notice of its basis of protest as of bid opening, Thermo Seal had 10 working days after that date to protest to our Office. Accordingly, Thermo Seal's protest of DOE's failure to clarify the ambiguities, filed here on May 30, substantially more than 10 working days after bid opening, is untimely.

Thermo Seal also requests that we decide its protest on the merits, in the event we find it untimely, under the good cause exception in our Regulations. See 4 C.F.R. § 21.2(b). The good cause exception to our timeliness requirements is limited, however, to circumstances where some compelling reason beyond the protester's control prevents the protester from submitting a timely protest. Farinelli Constr. Inc.--Request for Reconsideration, B-234636.2, Mar. 29, 1989, 89-1 CPD ¶ 329. Thermo Seal has not presented any evidence indicating any such reason exists here; therefore, the good cause exception does not apply.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel