

**DECISION**



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

**FILE:** B-206754

**DATE:** January 24, 1983

**MATTER OF:** Reliance Steel Products Company

**DIGEST:**

1. Complaint regarding deficiencies apparent on the face of a solicitation in state procurement funded with Federal grant funds must be filed before bid opening. Although complainant allegedly did not learn of solicitation until 2 days before bid opening, the firm nonetheless had a reasonable opportunity to file its complaint prior to bid opening.
2. Even assuming that grant complainant could not have filed its complaint regarding solicitation specifications prior to bid opening, complaint filed with grantor agency almost 1 month after bid opening nonetheless is untimely under rule that grant complaints must be filed within a reasonable time after the basis of the complaint is evident.

Reliance Steel Products Company complains about the specifications in a solicitation issued by the Kansas Department of Transportation for bridge repair. The bridge repair project, Kansas Project No. 89 C 1209-01, is substantially funded with Federal Highway Administration grant funds. We consider such complaints pursuant to our public notice entitled "Review of Complaints Concerning Contracts Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975. Reliance contends that the bridge floor specifications were unduly restrictive and effectively limited the competition for that portion of the project to one manufacturer. We dismiss the complaint as untimely.

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The solicitation called for, among other repairs, the installation of a new bridge floor. Reliance, a manufacturer of bridge floors, submitted subcontract proposals to several of the contractors bidding on the project, after it learned of the solicitation 2 days before bid opening. Reliance contends that the Kansas Department of Transportation specified a bridge floor design which was identical to one produced by only one company, Greulich, Inc.

Reliance's complaint involves an alleged deficiency apparent on the face of the solicitation. To be considered on the merits, such a complaint must be filed before bid opening or the time for receipt of initial proposals, when corrective action is most practicable. Evans Engine and Equipment Co., B-207842, July 1, 1982, 82-2 CPD 12; Caravelle Industries, Inc., 60 Comp. Gen. 414 (1981), 81-1 CPD 317. Reliance's initial complaint was filed with the Department of Transportation almost 1 month after bid opening. Therefore, the complaint is untimely and we will not consider it on the merits.

Reliance argues that because it did not learn of the solicitation until 2 days before bid opening, it could not possibly have filed a complaint in that short period of time. We do not agree. In similar situations, we have found that a period of as little as 2 days did afford a bidder a reasonable opportunity to file a protest or complaint prior to bid opening. See, e.g., Cybermedic, B-200628, May 19, 1981, 81-1 CPD 380; Irvin Industries, Inc., B-187849, March 28, 1977, 77-1 CPD 217. We note that Reliance was able, in the 2 days available to it prior to bid opening, to prepare and submit quotations to the contractors bidding on the project.

Even if we were to agree with Reliance that it could not have filed its complaint prior to bid opening, we would nevertheless find its complaint untimely. If our Bid Protest Procedures, which apply to direct Federal procurements, applied in this case, any request for review would have to have been filed, at the latest, within 10 working days after Reliance knew or should have known the basis of the complaint. While that same 10-day rule does not apply expressly to grant complaints, such complaints at least must be filed within a reasonable time after their basis is known. Brumm Construction Company, 61 Comp. Gen. 6 (1981), 81-2 CPD 280.

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Although Reliance complained to the Department of Transportation within 10 days after learning that its proposal definitely would not be accepted, the record establishes that Reliance knew 2 days before bid opening that its bridge floor design would not meet the solicitation specifications. Reliance did not have the option of bidding in the face of solicitation specifications it knew it could not meet and waiting for rejection. The complaint filing period commenced when Reliance had initial knowledge of the basis of its complaint, which was when the firm reviewed the specifications. Reliance's delay of almost a full month after that date in filing a complaint was not reasonable.

The complaint is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel