



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Castle Industries  
File: B-229061  
Date: September 18, 1987

### DIGEST

1. Protest that bid was improperly rejected as non-responsive is dismissed as untimely where protest was filed more than 10 working days after the basis of protest was known.
2. Protest after bid opening of agency's failure to provide adequate notice of delay of bid opening which allegedly precluded protester from obtaining an extension of its irrevocable letter of credit is untimely. Assuming that the protester did not have a reasonable opportunity to protest prior to bid opening, it was required to protest within 10 working days after its protest basis was known.

### DECISION

Castle Industries protests the rejection of its bid as nonresponsive under invitation for bids No. GS0P587GA0036 issued by the General Services Administration (GSA). GSA rejected Castle's bid because the firm submitted with its bid an irrevocable letter of credit which expired prior to the bid acceptance period. Castle argues that the rejection of its bid was an "abuse of discretion" by GSA. The protester also argues that GSA failed to provide proper or sufficient notice that bid opening would be delayed and, as a result, Castle did not have adequate time to obtain an extended letter of credit to cover the bid acceptance period which was to begin June 30, 1987, instead of June 23.

GSA has advised our Office that by letter of July 8, 1987, Castle was informed that its bid had been rejected as nonresponsive because the firm's irrevocable letter of credit "expires . . . before the minimum bid acceptance period." According to GSA's records, Castle received the July 8 rejection letter on July 10. GSA also has advised us that on July 9, the protester was orally notified that its bid had been rejected. We received Castle's protest against the rejection of its bid on September 8.

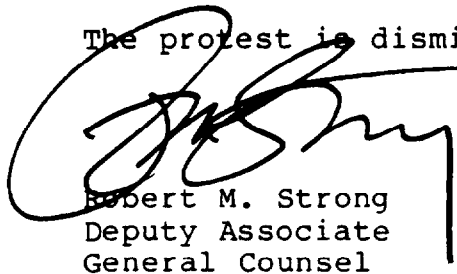
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Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987), require that protests be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Here, to the extent Castle is challenging GSA's rejection of its bid, the firm's protest first filed on September 8, almost 2 months after it learned that its bid had been rejected due to an unacceptable letter of credit is untimely and will not be considered on the merits. Kinemetrics/TrueTime--Reconsideration, B-227305.2, June 18, 1987, 87-1 C.P.D. ¶ 612.

We note that the protester apparently decided to protest the rejection of its bid only after the firm received, on August 31, a letter from GSA notifying Castle of an award to another firm. However, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), a protester must file its protest within 10 working days after its basis of protest is known. Here, as noted above, GSA notified Castle of the rejection of its bid and the basis for the rejection no later than July 10 and the firm had 10 working days to protest from that date.

Further, Castle's protest that GSA did not provide proper or adequate notice of its decision to delay bid opening is also untimely. Protests, such as this one, based on alleged improprieties in the solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1); Cybermedic, B-200628, May 19, 1981, 81-1 C.P.D. ¶ 380. Castle did not protest this matter until several months after the June 30 bid opening date. Castle states that on the afternoon of Friday, June 26 it learned that bid opening had been delayed until Monday, June 30 giving the firm less than a day to obtain an extension of its irrevocable letter of credit and protest this matter. Assuming that the protester did not have a reasonable opportunity to protest prior to bid opening, it was required to protest within 10 working days after learning its protest basis, which Castle did not do here. See Reliance Steel Products Company, B-206754, Jan. 24, 1983, 83-1 C.P.D. ¶ 77. Calligan, Inc., B-192581, Mar. 6, 1979, 79-1 C.P.D. ¶ 149.

The protest is dismissed.



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