

**DECISION**



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

**FILE: B-204198.2**

**DATE: August 24, 1982**

**MATTER OF: Young Patrol Service--Request for Reconsideration**

**DIGEST:**

1. A contention, in support of a request for reconsideration, that GAO misread a protest submission in finding a particular ground of protest untimely is without merit where GAO's interpretation of the submission as not raising the protest ground was the most reasonable one; a protester which fails to clearly identify and explain its grounds for protest runs the risk that its protest will not be construed as intended.
2. Where, in response to a Freedom of Information Act request, the protester received a copy of one of two telegrams constituting the awardee's irrevocable letter of credit (bid guarantee), but waited until it received a copy of the second telegram (more than six weeks later) before protesting a defect which was apparent on the face of both telegrams, that protest allegation was untimely, and prior decision to that effect is affirmed.

Young Patrol Service requests that we reconsider our decision in Young Patrol Service, B-204198, May 5, 1982, 82-1 CPD 422, denying its protest concerning General Services Administration (GSA) invitation for bids (IFB) No. PBS 9PPB-81-0045. In that decision, we dismissed as untimely Young's allegation that the irrevocable letter of credit submitted with the bid of Master Security Services, the awardee, contained two deficiencies which rendered Master's bid nonresponsive to the IFB's bid guarantee requirement: (1) it was issued in the name of Master Security Company rather than Master Security Services, the name on the bid; and (2) it lacked the authorized

authentication required by the Uniform Commercial Code. Young contends that our dismissal was based on a misunderstanding of material facts, and urges that we now review these grounds of protest. We affirm our prior decision.

The record in Young's protest indicated that Young received a copy of Master's telegraphic letter of credit on October 14, 1981, in response to a Freedom of Information Act (FOIA) request. Under our Bid Protest Procedures, Young was required to raise any allegations relating to the form of the letter of credit no later than ten working days later, 4 C.F.R. § 21.2(b)(2) (1982). Young did supplement its pending protest with an October 27 mailgram received in our Office on October 28, stating, in pertinent part, as follows:

\* \* \* \* There was no bid bond filed with the bid of Master Security Service. Accompanying the bid was a telegram stating that a letter of credit had been established for the account of Master Security Company. The telegram did not state the purpose for the letter of credit, any particulars of the letter of credit and did not state a penal amount of the letter of credit. This is insufficient as a bid bond under FPR. \* \* \*"

We read this mailgram as timely alleging three defects in Master's telegraphic letter of credit: (1) the telegram did not state the purpose for the letter of credit; (2) it did not state any particulars; and (3) it did not state a penal amount. GSA read the mailgram the same way and responded to these three issues in its report on the protest. When we reviewed Young's subsequent comments on GSA's report, it appeared to us that in those comments Young raised for the first time two additional defects in Master's letter of credit: (1) it was issued in the wrong name; and (2) it lacked an authorized authentication. Accordingly, we dismissed these two allegations as untimely raised, and proceeded to deny Young's protest based on the other arguments it had raised.

Young now contends that the first two sentences of the quoted portion of its October 27 mailgram were sufficient to allege that the letter of credit was issued in the wrong name--Master Security Company instead of Master Security Services--and that the authentication allegation otherwise was timely filed. Although the second relevant sentence of the mailgram stated that Master's bid was accompanied by a letter of credit established in the name of Master Security Company, it did not go on to state that the letter of credit was defective for this reason.<sup>1</sup> It seemed clear to us that the sentence was intended merely to establish that Master had submitted a letter of credit, thus giving Young a point of reference for noting specific deficiencies, which it proceeded to do in the next sentence. That third sentence clearly delineated various alleged defects. That the letter of credit was issued in the wrong name was not so delineated.

Our Bid Protest procedures require that protests and other submissions be "concise, logically arranged, and direct." 4 C.F.R. § 21.1(d). It is not our function to fashion protest allegations from inartfully stated facts, and any protester which fails to clearly set forth and explain its grounds of protest runs the risk that its protest will not be construed as intended. Even if it is possible to read Young's mailgram as Young interprets it, we believe the interpretation incorporated in our original decision is the most reasonable one, and that Young must bear the consequences of its failure to clearly set forth its allegations.

With regard to the authentication allegation, Young asserts that it was timely made even though raised for the first time in its comments on GSA's report. Young points out that while our untimeliness determination was premised on its receipt of Master's letter of credit on October 14, as part of GSA's FOIA response, it in fact received at that time only one of two telegrams comprising the letter of credit. Young notes that the telegram received on October 14 was only an amendment to the

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<sup>1</sup> We note that contrary to the view expressed by Young, the mere fact that a letter of credit is issued in other than the name on the bid is not a material defect where it can be established that the differently identified entities are the same. Jack B. Imperiale Fence Co., Inc., B-203261, October 26, 1981, 81-2 CPD 339.

original telegraphic letter of credit, and maintains that since GSA only disclosed that original telegram with its November 27 report on the protest, it could not have protested the absence of the authentication until it filed its comments on the report. Young further points out that since GSA raised the authentication issue in its report, Young could not argue this issue until it received the report.

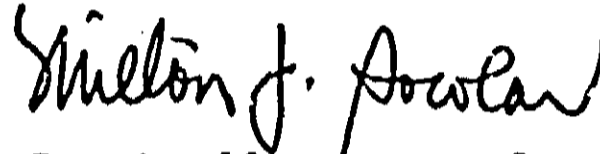
In finding this protest basis untimely, we were fully cognizant of Young's claim that it had received only the second of two letter of credit documents on October 14, and so noted in our decision. We considered any late disclosure of the original telegram inconsequential, however, since the telegram Young received on October 14 set forth all necessary information on which its objections were based. Our opinion in this regard has not changed. While Young is correct that it could not have known whether the original telegram was properly authenticated until it received GSA's report, this particular knowledge was not essential. Master's letter of credit consisted of both telegrams and both were authorized in the same manner--a notary's certification that the copy was authentic. If Young believed this form of authentication did not meet the requirements of the UCC, it clearly could have so alleged within 10 days after receiving the second telegram on October 14, just as it alleged three other defects (noted above) based on this telegram. Because Young did not do so, this allegation was untimely.

In any event, the second telegram clearly stated that it was an amendment to an earlier letter of credit and if Young believed it could not thoroughly assess the acceptability of Master's letter of credit without that earlier document, it should have advised GSA that the document was not received and specifically requested a copy. We find no indication that GSA purposely omitted the earlier telegram from its FOIA response, or that it would not have honored Young's renewed request. Instead, however, Young chose to sit idly by for one and a half months and wait for GSA's report. As we have frequently stated, such a failure to diligently pursue relevant information renders untimely any later protest based on that information.

Entron, Inc., B-202397, August 12, 1981, 81-2 CPD 128.

Further, the fact that GSA dealt with the authentication issue in its November 27 report has no bearing on the timeliness of this contention. Timeliness is measured not from the time the agency first comments on an issue (unless the relevant facts are made known to the protester for the first time), but from the time the protester first knew or should have known the facts upon which the issue is based. Since we have found that Young should have been aware of the authentication issue on October 14 and did not protest on this ground until more than 10 days later, this allegation was untimely; GSA's later reference to the issue does not alter this conclusion.

Our prior decision is affirmed.



Acting Comptroller General  
of the United States