DECISION

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

FILE: B-209226 **DATE:** October 26, 1982

MATTER OF: IMR Systems Corporation

DIGEST:

When GAO has no record of receipt of a protest within the 10-day time for filing, a subsequently filed copy of the alleged protest document is not adequate proof of timely filing of original protest. Since subsequently filed document does not meet 10-day filing requirement, protest must be dismissed as untimely.

IMR Systems Corporation protests the award of a contract for automatic data processing equipment under request for proposals No. NA-82-RFP-00019, issued by the U.S. Department of Commerce. We will not consider the protest because it is untimely.

According to the Department of Commerce, the deadline for best and final offers was August 17, 1982. On August 19, the agency states, it advised IMR via telephone that the offer was too high for continued negotiation. By letter of September 24, IMR Systems forwarded to our Office a copy of a September 8 mailgram, purporting to be a protest which the firm previously had filed with us. We have no record of receiving this mailgram, in which IMR argued that it was the lowest priced offeror and that it was technically qualified to perform the contract.

Our Bid Protest Procedures require that protests be filed--defined as received--not later than 10 days after the basis for them is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1982). We caution bidders that protests should be transmitted in a manner that will insure their earliest receipt, and state that we will not consider an untimely protest unless it was sent either by registered or certified mail not later than the fifth day or by mailgram not later than the third day before the time for filing expires. Id., § 21.2(b)(3).

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In cases where we have no record of receipt of a protest within the 10-day period, a subsequently filed copy of that protest is not adequate proof of timeliness. Ray Allen Manufacturing Co., Inc., B-208853, September 21, 1982, 82-2 CPD ___. In other words, the subsequently filed copy must independently satisfy our timeliness requirements.

Here, neither IMR's original mailgram nor the subsequently filed copy can be considered timely. Since the firm learned that it had been eliminated from competition on August 19, its 10-day time for filing expired on September 2, and any mailgram protesting the elimination should have been sent not later than August 30. IMR's September 8 mailgram, even if it had reached our Office, would have been untimely, and its September 24 letter with a copy of the mailgram obviously exceeded the 10-day limit.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel