

DECISION

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

FILE: B-212436**DATE:** August 10, 1983**MATTER OF:** SACO Defense Systems Division,
Maremont Corporation**DIGEST:**

Protest untimely filed with procuring agency (more than 10 days after basis of protest was known) and then filed with GAO after denial by contracting officer is not for consideration on merits under 4 C.F.R. § 21.2(a), which requires that initial protest to agency be filed on a timely basis.

SACO Defense Systems Division, Maremont Corporation (SACO), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA09-83-B-4712, issued by the Department of the Army. We dismiss the protest as untimely.

By letter dated June 2, 1983, the Army informed SACO that its bid was determined to be nonresponsive because it failed to include written permission for use of certain Government property as required by the solicitation. By telex dated July 1, 1983, SACO protested this matter to the Army. The Army received SACO's protest on July 5, 1983, and by telex dated July 6, 1983, denied it. Subsequently, on July 20, 1983, SACO filed a protest with this Office.

We find the protest to be untimely under our Bid Protest Procedures (4 C.F.R. part 21 (1983)). Section 21.2(a) provides that where a protest has been initially filed with the procuring agency on a timely basis, any protest to our Office will be considered if filed within 10 days of notification of initial adverse agency action. Section 21.2(b)(2) states that protests must be filed within 10 working days after the basis of the protest is known. Section 21.2(b)(3) defines the term "filed" as receipt in the contracting agency or in the GAO, as the case may be. Here, SACO knew of the basis of its protest upon receipt of the Army's letter of June 2, 1983, but did not protest to the procuring activity until July 5, 1983. Allowing a reasonable time for delivery of the Army's letter of June 2, it appears that SACO's protest filed with the Army on July 5, 1983 (more than a month after the Army mailed the letter), was untimely filed with the agency and, therefore,

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will not be considered by our Office. Technical Services Corporation, B-190942, April 13, 1978, 78-1 CPD 282.

Protest is dismissed.

J. H. Barclay, Jr.
Harry R. Van Cleve
Acting General Counsel