

**DECISION**

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

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**FILE:** B-214218**DATE:** February 15, 1984**MATTER OF:** Ohio Medical Products**DIGEST:**

1. Protest alleging that the agency treated the protester unfairly in evaluating its proposal is untimely since the protest was filed more than 10 days after the date the protester knew or should have known the basis of its protest.
2. Contention that awardee cannot timely provide required programmed instructional material at the stated item price challenges the agency's determination that the awardee is responsible, a matter that GAO will not review absent a showing of possible fraud or bad faith on the part of government procurement officials or of misapplication of definitive responsibility criteria.
3. GAO has no authority under the Freedom of Information Act regarding an agency's release of documents.

Ohio Medical Products, a division of Airco, Inc., protests the rejection of its proposal and the award of a contract for anesthesia machines and related items to North American Drager Company under solicitation No. F41689-83-R-0056, issued by Randolph Air Force Base, Texas. The protester also requests that it be allowed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982), to review documents that the awardee submitted to the agency. We dismiss the protest.

By letter dated December 27, 1983, the contracting officer informed the protester that its proposal had been rejected because its best and final offer did not comply with the requirement to provide a programmed instructional text. The letter also informed the protester that award had been made to North American Drager and listed the item and total prices of the award. By

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letter dated January 23, 1984, received here on January 26, the protester complains that the agency treated it unfairly with respect to the requirement to provide the programmed text and states that the awardee cannot provide the text within the required time and at the price stated in the letter.

The protest is untimely. Our Bid Protest Procedures provide that a protest must be filed no later than 10 days after the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1983). "Filed" means received by this Office. Id. § 21.2(b)(3). In this case, the protester knew the basis for the rejection of its proposal at least by the time it received the agency's letter of December 27. Allowing 5 working days for receipt of the letter, Gary's Disposal, Inc., B-207864, July 23, 1982, 82-2 CPD 72, the latest the protester could have filed its protest was January 18. Since the protest was not received in this Office until January 26, it is untimely and will not be considered. See Western Technologies, Inc., B-212889, September 26, 1983, 83-2 CPD 376.

Moreover, the protester's contention that the awardee cannot timely provide the programmed instructional text at the price stated in the contracting officer's letter is essentially a challenge to the agency's determination that the awardee is responsible. This Office will not review an affirmative determination of responsibility unless a protester makes a showing of either possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were not met. (4 C.F.R. § 21.3(g)(4) (as added by 48 Fed. Reg. 1931 (1983))). The protester does not allege either circumstance here.

Finally, with respect to the protester's request that it be allowed under the FOIA to review documents submitted by the awardee to the agency, this Office has no authority under the FOIA regarding the release of documents in the possession of an agency. Energy Complexes, Inc., B-209454, July 26, 1983, 83-2 CPD 125. The protester must pursue its disclosure remedy under the provisions of the Act.

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We dismiss the protest.

*Harry R. Van Cleve*  
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Acting General Counsel