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**DECISION**



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

FILE: B-203165

DATE: June 8, 1981

MATTER OF: Eastman Dental Center

DCA 06783 ✓

**DIGEST:**

1. Protest filed with GAO more than 10 working days after same protest filed with contracting agency was denied by contracting officer is untimely filed and is not for consideration.
2. Because GAO Bid Protest Procedures are published in 4 C.F.R. part 20 (1980), any party protesting Federal procurement is considered to be on constructive notice of existence and content of such procedures.
3. GAO has no authority under Freedom of Information Act to determine what information must be disclosed by other Government agencies.

The Eastman Dental Center (Eastman) protests the award made to another firm under Food and Drug Administration (FDA), Public Health Service, request for proposals No. 223-80-2370. We dismiss the protest as untimely filed with our Office.

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Originally, Eastman filed its protest with the contracting agency. Three bases for the protest were advanced. Eastman also requested under the Freedom of Information Act (FOIA) the names and titles of the evaluation panel members and the written results of their evaluation of the Eastman proposal.

By letter of December 15, 1980, the contracting officer advised Eastman of his denial of each basis of protest. Eastman was also advised that it would be contacted about its FOIA request, which was done in February.

By letter of April 27, 1981, received by our Office on May 4, Eastman requested that we review the matter. Eastman states, first, that it wished

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an independent review of its three protest bases, that it was not advised of the procedures necessary for such an independent review, and that, instead, its protest was considered only by the contracting officer--the person about whom Eastman primarily was complaining. Second, Eastman states that its request under the FOIA has been treated in a way suggesting a "cover-up" since after inordinate delays all it has received (on February 23) has been edited excerpts of the evaluation of its proposal.

As regards the consideration given to the three Eastman protest bases by the contracting officer and the validity of the protest, the raising of these matters with our Office is untimely and, consequently, they will not be considered on their merits. In our Bid Protest Procedures, specifically 4 C.F.R. § 20.2(a) (1980), all participants in Federal procurements are advised that:

"\* \* \* If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of \* \* \* initial adverse agency action will be considered \* \* \*"

Even though the contracting officer advised Eastman that it could appeal his decision (the initial adverse agency action) to our Office, the Eastman protest was not filed with our Office until May 1981. That filing is clearly not within 10 working days of the initial adverse agency action. That Eastman may not have known the correct procedures for appealing the contracting officer's determination is irrelevant. Our Bid Protest Procedures are set forth in 4 C.F.R. part 20, and we regard this publication as putting a protester on constructive notice of the existence and content of the procedures. Elm State Electronics, Inc., B-193746, January 26, 1979, 79-1 CPD 58.

Finally, as to the Eastman contention that its FOIA request has not been properly treated by the contracting agency, our Office has no authority under the FOIA to determine what information must be

disclosed by other Government agencies. Reza Seyyedin  
Art and Film Production--Reconsideration, B-191470,  
September 29, 1978, 78-2 CPD 245; Dynatrend, Inc.,  
B-192038, January 3, 1979, 79-1 CPD 4.

Accordingly, the protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel