

**DECISION**



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

**FILE:** 3-222817.2 **DATE:** May 8, 1986  
**MATTER OF:** Trend Construction & Associates--  
Reconsideration

**DIGEST:**

1. Under our Bid Protest Regulations, a protest must be filed with the contracting agency or the General Accounting Office within 10 working days after the basis for protest is known or should have been known, whichever is earlier. A Freedom of Information Act request does not constitute a protest to the agency for purposes of our timeliness requirements.
2. Where protester submits Freedom of Information Act (FOIA) request prior to filing of protest with General Accounting Office (GAO) and record shows that information requested under FOIA did not reveal basis of protest and protester already knew the basis of its protest, the FOIA request does not toll the GAO timeliness requirements.

Trend Construction & Associates (Trend) requests reconsideration of our April 14, 1986, dismissal of its protest filed with our Office on that same day. We dismissed the protest because Trend failed to file its protest within 10 working days of the date the basis of protest was first known or should have been known. See GAO Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985).

We affirm the decision to dismiss the protest.

Trend's protest concerned the award of a contract to J.A. Jones Construction (Jones) under request for proposals (RFP) No. N62474-84-R-4636 issued by the United States Navy for the construction of family housing units at the Naval Air Station, Adak, Alaska. Award of this contract was based on two factors: an evaluation of the proposed design and the cost of the work. By letter of March 24, Trend was notified that Jones was selected for the award. On

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March 27, the Navy permitted Trend to review Jones' proposal. According to Trend, its review disclosed that Jones proposed to perform the contract for the same cost as it did and Trend therefore concluded that the award to Jones must have been based on that firm's proposed design receiving a superior rating. After its review of Jones' proposal, Trend, however, believed that its proposal was superior to Jones' offer. Trend concluded that the award to Jones was based on an arbitrary and capricious evaluation of the proposals and, in its protest on April 14, it set forth an item-by-item comparison between its proposal and Jones' proposal to demonstrate its proposal's superiority.

Our Bid Protest Regulations require that a protest be filed within 10 working days of the date the basis of protest is first known or should have been known, 4 C.F.R. § 21.2(a)(2), and provide for dismissal of any protest which fails to comply with that requirement, 4 C.F.R. § 21.3(f). Since Trend knew the basis of protest on March 27 and did not file its protest until April 14, 12 working days later, we dismissed the protest as untimely.

In its request for reconsideration, Trend contends that it did not know the basis of its protest as of March 27. Rather, it states that it filed a request under the Freedom of Information Act (FOIA) with the contracting agency to obtain the point scores from the evaluation of Jones' and its proposals in order to establish whether the evaluations were arbitrary and, thus, whether it had a basis of protest. It states that the FOIA request also constituted a protest to the agency. By letter of April 18, the agency refused to release the requested information. Trend asserts that it was entitled to wait for that response before filing a protest with our Office and, since it filed its protest with GAO prior to receipt of that response, its protest is timely.

To be timely, Trend must have filed its protest with the Navy or our Office within 10 working days after it knew or should have known the basis of protest, whichever is earlier. 4 C.F.R. §§ 21.2(a)(2) and 21.2(a)(3). Further, a protest based entirely on materials received pursuant to a FOIA request will be considered timely if filed within 10 working days of the protester's receipt of information upon which its protest is founded and the protester diligently pursued the release of information under the FOIA. Quality Inn - Reconsideration, B-217014.2, Jan. 28, 1985, 85-1 C.P.D. ¶ 110.