

**DECISION**

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

PL-2  
Billard  
120196

**FILE:** B-209964

**DATE:** December 22, 1982

**MATTER OF:** S/S&W Landscape Maintenance

**DIGEST:**

GAO dismisses protest as untimely, where it is filed more than 10 working days after notice of initial adverse agency action; protester's appeal of the adverse action within agency channels did not extend the time for filing a protest with GAO.

S/S&W Landscape Maintenance protests the award of contract No. N62474-82-C-6510 for grounds maintenance at the Naval Regional Medical Center, Oakland, California, to Heather Farms Landscape, Inc. We dismiss the protest because it was not timely filed under our Bid Protest Procedures.

S/S&W states that on September 22, 1982, the Navy informed it that the two low bids had been rejected for failure to submit bid guarantees, and that the bid of Heather Farms, the third low bidder, had been rejected because that firm failed to acknowledge amendments to the solicitation. This led the protester, the fourth low bidder, to believe that it would be awarded the contract. Subsequently, S/S&W was informed that award had been made to Heather Farms.

The protester states that on September 27, 1982, it filed a protest with the Officer in Charge of Construction of the Navy Public Works Center; the protest was denied on October 6. S/S&W then appealed to the Commanding Officer of the Public Works Center on October 18. No response to this appeal had been received by S/S&W as of November 24, when it mailed its protest to our Office.

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In its protest to our Office, which was received on November 26, S/S&W protests the award to Heather Farms on the ground that its bid was nonresponsive because among the amendments it failed to acknowledge was one containing a new wage determination which, S/S&W contends, directly affects labor costs and had a significant effect on the price bid.

Under 4 C.F.R. § 21.2(a) (1982), if a protest is filed initially with the contracting agency any subsequent protest to our Office must be filed within 10 working days of the protester's learning of initial adverse action on the protest. The Navy's initial adverse action was known to S/S&W upon the latter's receipt of the Navy's letter of October 6.

A protester's continued pursuit of its protest with the contracting agency, despite the initial rejection of its protest, does not extend the time or obviate the necessity for filing a protest with our Office within 10 working days of the initial adverse agency action. HCS, Inc., B-204960.2, March 23, 1982, 82-1 CPD 275, affirmed on reconsideration, B-204960.3, April 26, 1982, 82-1 CPD 379. Since the protest was not filed here until November 26, it is untimely and will not be considered on the merits.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel