

**DECISION**



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

29753

**FILE:** B-216539

**DATE:** November 6, 1984

**MATTER OF:** Instrument Control Service

**DIGEST:**

Protest filed with GAO more than 10 working days after an oral denial of an oral agency-level protest is untimely. Moreover, the fact that the firm continued to pursue the matter with the contracting agency by filing a written protest does not toll the time to protest to GAO.

Instrument Control Service (ICS) protests the rejection by the Navy of a step one proposal it submitted in response to request for technical proposals (RFTP) N61339-84-R-0023. The procurement is for the operation and maintenance of simulators at the Naval Technical Training Center in Florida. We dismiss the protest.

Documentation the protester has submitted with its protest indicates that its technical proposal was rejected by letter dated August 14. Shortly thereafter, ICS called the Navy and orally protested its rejection by expressing, in its words, "extreme displeasure" concerning the Navy's action, which ICS characterized as inconsistent with the RFTP requirements. On August 24, the Navy advised ICS orally that it was upholding its rejection of ICS's proposal. ICS then filed its protest in writing with the Navy, to which the Navy responded in a September 21 letter affirming the "verbal denial . . . of your verbal protest . . . ." ICS's protest to our Office was filed on September 25.

We dismiss ICS's protest to our Office because it was not filed within 10 working days after ICS learned on August 24 that its oral agency level protest had been denied. Section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1984), requires that if a protest is filed initially with a contracting activity, a subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive notice of initial adverse agency action. Consequently, we have held

030524

B-216539

that a protest filed with our Office more than 10 working days after an oral denial of an oral agency-level protest is untimely. Air and Pump Co., B-211179, Oct. 11, 1983, 83-2 CPD ¶ 431. Moreover, the fact that ICS continued to pursue its remedies at the agency level, by refileing its protest in writing, does not toll the time within which ICS was required to file a protest with our Office. Resource Engineering Inc., B-212453, Feb. 14, 1984, 84-1 CPD ¶ 190.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel