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**DECISION**

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

FILE: B-194833

DATE: January 17, 1980

MATTER OF: Durant Insulated Pipe, Division of  
Ricwil, Inc. *DLG 03640*

**DIGEST:**

Protest filed with GAO more than 10 days after protester learns of initial adverse agency action on protest filed with agency is dismissed as untimely.

Durant Insulated Pipe, Division of Ricwil, Inc. (Ricwil), a supplier of "Class A" type (insulated pipe) underground heat distribution systems, protests the portion of the Corps of Engineers' specifications *AGC00305* concerning underground heat distribution systems under IFB DACA45-79-B-0030, issued on December 21, 1978 for the construction of a heat plant at F. E. Warren Air *AGC00780* Force Base, Cheyenne, Wyoming. Ricwil contends that its Class A system was improperly excluded as an acceptable system for use on the project.

The IFB's specifications called for a "Class B" type (concrete trench) underground heat distribution system. Ricwil argues that it holds a "letter of acceptability" for its system and that a Corps regulation (Guide Specification for Military Construction, OCE 301.21, July 1976) requires that a Class A system be included in specifications for construction projects of this type. Ricwil states that this regulation is mandatory and that no deviation is permitted without prior approval by the Office of Chief of Engineers, which, Ricwil contends, was never granted.

The record shows that Ricwil, vigorously objecting to the exclusion of its system, made extensive efforts to have the Corps change the specifications after learning of its provisions in January, 1979. Among other things, Ricwil filed a "protest", hand-delivered on February 22, 1979, with the "Tri-Service Committee", a technical committee composed of representatives from the three military services and which

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*[ALLEGATION THAT SYSTEM WAS IMPROPERLY EXCLUDED IN SPECIFICATIONS]*

has responsibility for the regulation in question. The committee held a meeting, which was attended by the contracting officer, on the complaints raised by the protester. According to Ricwil, it was notified on February 23, 1979 by the committee:

- "1. That Warren Air Force Base was a class B site, that the system will be concrete trench and that a class A System will not be allowed as an alternative for the 'best interests of all concerned'.
2. The suggestion was made that Ricwil consider value engineering procedure with the successful bidder.
3. They further advised that the Ricwil class A system was more than adequate but that it was just not needed at this site."

Ricwil was again subsequently told on February 27, 1979 that a Class A system would only be acceptable under the value engineering procedures. Bid opening was held on March 1, 1979 and Ricwil was informed on April 20, 1979 of the award of the contract to the low bidder. Ricwil filed its protest with our Office on May 9, 1979.

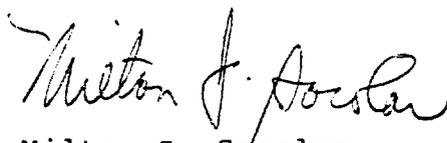
The Corps argues that the "protest" to the Tri-Service Committee did not constitute the filing of a proper protest with the contracting agency, and that therefore since the alleged impropriety in the solicitation was not protested prior to bid opening as required by 4 C.F.R. § 20.2(b)(1) (1979), the protest is untimely. However, even if we assume, without deciding, that Ricwil's "protest" of February 22, 1979 was a protest timely filed with the contracting agency, its protest to our Office is nonetheless untimely.

We reach this conclusion based on the provisions of 4 C.F.R. § 20.2(a) which require that if a protest is initially filed with the contracting agency in a timely manner, in order for any subsequent protest to our Office to be timely, it must be filed within 10 working days the protester's learning of initial adverse agency action. Ricwil was put on notice of adverse agency action on March 1, 1979, when bids were opened, or, at the very latest, on April 20, 1979 upon being informed of the award of the contract. We did not receive the Ricwil protest until May 9, 1979, beyond the 10 day time constraint established by 4 C.F.R. § 20.2(a).

Therefore, regardless of whether Ricwil's "protest" of February 22, 1979 is considered a protest to the agency, we must conclude its protest to our Office is untimely and thus not for consideration on the merits.

Ricwil argues that it was "lulled" into not filing a protest by the suggestion of the Corps that it explore the possibility of value engineering. We do not believe that this argument forms a basis for consideration of Ricwil's protest on the merits. Our rules impose strict time limits and are strictly construed.

Protest dismissed.



Milton J. Socolar  
General Counsel