

DECISION

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

28856

FILE: B-215642**DATE:** July 20, 1984**MATTER OF:** Energy Master of Maryland Inc.**DIGEST:**

Protest filed with GAO more than 10 working days after initial adverse action by contracting agency on protest filed with contracting agency is dismissed as untimely. Protester's continued pursuit of protest with contracting agency does not change this result.

Energy Master of Maryland Inc. (EMMI) protests the award of a contract to Acorn Specialties (Acorn) under the Department of the Army (Army) invitation for bids (IFB) No. DAKF27-84-B-0001 for digital thermostats.

By letter dated March 23, 1984, EMMI protested the Army's contract award to Acorn. EMMI alleged that the Army improperly failed to evaluate its thermostat. This protest was denied on April 6, 1984. EMMI appealed this decision to the Post Commander on April 18. The appeal was denied on May 15, 1984. EMMI continued to pursue its protest with the Army until the protest was denied by the Deputy Post Commander on May 25, 1984. Subsequently, EMMI protested to this Office by letter dated June 25, 1984.

Under our Bid Protest Procedures, once a protest has been timely filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester receives actual or constructive notice of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a) (1983). The fact that a protester continues to pursue its protest with the contracting agency does not alter this rule. Starck Van Lines of Columbus, Inc., B-211361, May 6, 1983, 83-1 C.P.D. ¶ 476. Consequently, since EMMI did not file its protest with this Office within 10 working days after receipt of the contracting officer's April 6 denial of EMMI's agency protest, the protest to our Office is untimely and we will not consider it on the merits. Id.

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The protest is dismissed.

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