

**DECISION**



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

**FILE:** B-214922

**DATE:** August 13, 1984

**MATTER OF:** Minnesota Valley Engineering, Inc.

**DIGEST:**

Protest is untimely where not filed with either contracting agency or GAO within 10 working days after basis of protest was known or, assuming congressional inquiry to contracting agency to have constituted either inquiry to learn basis of protest or actual protest, where not filed with GAO within 10 working days after knowledge was acquired as to basis of protest or as to denial of protest to contracting agency.

Minnesota Valley Engineering, Inc. (MVE), protests the single award of two items to Cryofab, Inc. (Cryofab), under Bureau of Mines, Department of the Interior, invitation for bids No. 684-2. MVE believes it should have received award for one of the items.

We dismiss the protest as untimely.

On March 1, 1984, two conversations between MVE and contracting agency personnel indicated that an award to Cryofab would, or probably would, be made. During both conversations, MVE stated that a single award to Cryofab would be protested. Award was made on March 5. By letter of March 6, MVE's congressional representative requested a complete explanation of the reasons for awarding a single contract and indicated that MVE wished to be advised of its appeal rights. By letter of March 14, the contracting officer furnished MVE with a copy of our Bid Protest Procedures (4 C.F.R. part 21 (1983)). By letter of March 16, the Congressman was informed by the agency of the reasons for making a single award and of the fact that the award was considered to be valid. MVE's protest to our Office was received on April 11, 1984.

Our Bid Protest Procedures provide, specifically at 4 C.F.R. § 21.2(a) and (b)(2) (1983), that:

"(a) . . . If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was [timely] filed. . . . In any case, a protest will be considered if filed with the General Accounting Office . . . .

"(b) . . .

"(2) . . . not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

Under any interpretation of the facts, the April 11 protest was filed untimely. As regards the March 6 congressional inquiry, we stated in our decision in Lion Recording Services--Reconsideration, B-188768, Nov. 15, 1977, 77-2 C.P.D. ¶ 366, that where a congressional inquiry to a contracting agency merely consists of a request for information, that inquiry does not constitute a protest. If the congressional inquiry was merely a request for information, then it is clear that no protest was filed with either the contracting agency or our Office within 10 working days of MVE's knowledge that the single award had been made. Moreover, even if MVE did not know the precise basis of its protest until the Congressman received (on or before March 22) the contracting agency letter of March 16 or if the congressional inquiry is considered to have been a protest (in view of the discussion of MVE's appeal rights), the protest filed with our Office would still be untimely. By March 22, MVE either knew the basis of its protest or that the agency had denied the protest. The MVE protest was not received by our Office within 10 working days of March 22.

The protest is dismissed.

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