

DECISION

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

26337

FILE: B-213088**DATE:** September 26, 1983**MATTER OF:** P-R Floor Covering Co.**DIGEST:**

1. A protest filed more than 10 days after the initial agency action denying a protest filed with the contracting agency is untimely and will not be considered.
2. The appeal to the agency head of a contracting officer's denial of a protest initially filed with the contracting agency does not toll the 10-day requirement for filing a subsequent protest to GAO.

The P-R Floor Covering Company protests the award of contract No. 181-83-0006 to Chi-Sioux, Inc. under a solicitation issued by the Department of Health and Human Services (DHHS), Indian Health Service. The thrust of the protest concerns Chi-Sioux's eligibility for the award of the contract under the Indian Health Service "Buy Indian" policy. We will not consider the protest because it is untimely.

The protest over this matter was first made to the DHHS regional office sometime in May 1983. On June 9, 1983, the protest was denied. At the time of the denial, P-R was advised that it could file an additional protest either with this Office or with DHHS in Washington. On June 17, 1983, P-R filed a protest with the Office of the Secretary, DHHS. That protest was apparently never resolved. The protest to this Office was filed on September 20, 1983, or more than 2 months after the initial denial.

A bid protest must be filed within the time limits prescribed in our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), if it is to be considered on the merits. To be timely, a bid protest filed initially with the contracting agency (the DHHS regional office in this case) must be filed with GAO within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a). The initial adverse agency action took place on June 9, and the

026750

B-213088

protester had actual knowledge of that denial sometime .. before June 17, the date of the further protest to the Secretary. An appeal within the agency from an adverse decision on the initial protest does not serve to toll the time limitations of our bid protest procedures. See International Logistics Group, Ltd., B-202819, May 19, 1981, 81-1 CPD 386.

The protest is dismissed.

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