

DECISION

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

FILE:

B-219242

DATE: July 22, 1985**MATTER OF:**

Sterling Millwrights, Inc.

DIGEST:

Protest that agency allowed awardee to perform work in location different from that specified in IFB is untimely when filed with GAO more than 10 days after protester receives notice of adverse agency action on protest filed with contracting agency.

Sterling Millwrights, Inc. (Sterling), protests the Department of the Navy's award of contract No. N62472-83-C-1931 to Boston Shipyard Corporation (BSC) for the rehabilitation of a barge-mounted boiler at Portsmouth Naval Shipyard, Portsmouth, New Hampshire. Sterling protests that although the invitation for bids specified that the work was to be done at the Portsmouth Naval Shipyard, BSC was allowed to perform the work at its Boston Shipyard. We dismiss the protest as untimely.

Bids for the project were opened on July 15, 1983. On July 22, 1983, Sterling protested to the Navy that BSC bid the job on the basis of relocating the barge-mounted boiler to its facility in Boston, thereby gaining an unfair advantage in the bidding process. The Navy denied the agency level protest prior to September 14, 1983. However, after award, BSC submitted a proposal to perform work at its Boston shipyard. The Navy accepted BSC's proposal because it would benefit the government by avoiding the cost of government-supplied utilities at Portsmouth, avoiding interference with ongoing Naval Shipyard operations, and increasing dock availability in the Naval Shipyard. Sterling protested to our Office on June 25, 1985.

Our Bid Protest Regulations provide that if an initial protest has been timely filed with the contracting agency, we will consider a subsequent protest to this Office that is filed within 10 days after the protester has formal notification of or actual or constructive knowledge of initial

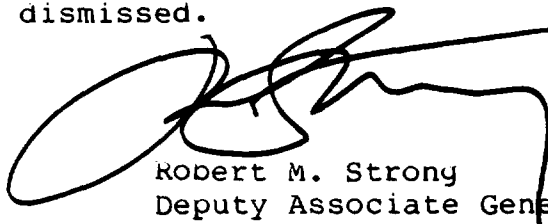
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adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1985). Initial adverse agency action occurred when the Navy denied the protest in September 1983. Since Sterling did not protest to our Office until June 25, 1985, its protest is untimely and will not be considered. Minnesota Valley Engineering, Inc., B-214922, Aug. 13, 1984, 84-2 C.P.D. ¶ 166.

Regarding Sterling's allegation concerning a claim BSC has filed with the Navy for additional compensation, this is a matter for resolution by the Navy under the Disputes clause in the contract. Sunnybrook Contractors, B-215789, July 31, 1984, 84-2 C.P.D. ¶ 144.

Finally, concerning Sterling's claim for lost revenues, even if this had been presented in connection with a timely protest, it would be for denial since there is no legal basis that permits recovery of anticipated profits. Blumfeldt Engineering Co., B-217529, Jan. 25, 1985, 85-1 C.P.D. ¶ 103.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel