

Jordan



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Computer Automation, Inc.

**File:** B-236972

**Date:** September 28, 1989

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## DIGEST

Protest is untimely when filed more than 10 working days after protester received oral notification of award to low technically acceptable offeror.

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## DECISION

Computer Automation, Inc. (CA), protests award of a contract to Schlumberger Technologies, Inc., under solicitation No. N00197-89-R-0032, issued by the Naval Ordnance Station, Louisville, Kentucky, for an automatic functional circuit board tester. CA alleges alternatively that Schlumberger has offered products which do not meet the requirements of the solicitation or has quoted prices which are anti-competitive, and possibly predatory, to win the solicitation.

We dismiss the protest.

The Navy and Schlumberger have informed our Office that CA was notified on August 28, 1989, the date of award, that Schlumberger was the awardee. CA received written confirmation of the award in a letter dated September 6, and filed its bid protest on September 18. The Navy and Schlumberger contend that CA's protest is untimely. We agree.

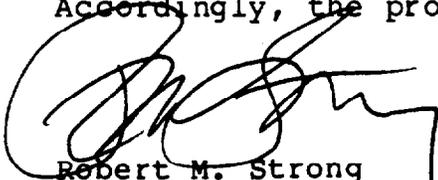
Our Bid Protest Regulations provide that a protest must be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a) (1989). CA was informed by telephone on August 28, that Schlumberger was the awardee. Oral notification is sufficient to place a protester on notice of its protest bases, and a protester may not delay filing its protest until receipt of written notification confirming the existence of protestable issues. Servidyne, Inc., B-231944, Aug. 8, 1988, 88-2 CPD ¶ 121. Here, CA was aware on August 28 that Schlumberger had been awarded the contract as the low technically acceptable offeror. Accordingly, it

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was required to protest the Navy's award within 10 days of August 28. Since it did not do so, its protest is untimely.

In any event, CA's protest grounds fail to state a valid basis for protest. Without elaboration, CA alleges that Schlumberger's products are inadequate; speculative allegations are insufficient to form the basis of a protest. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275. Further, whether Schlumberger can meet the contract's requirements is essentially a matter of responsibility and we will only review the contracting officer's affirmative determination of responsibility under circumstances not present here. Esilux Corp. B-234689, June 8, 1989, 89-1 CPD ¶ 538. CA's alternative contentions regarding an apparent below-cost offer and the alleged furnishing of CA's proprietary pricing information to Schlumberger by former CA employees, are not reviewed by our Office. The submission and acceptance of below-cost offers are not legally objectionable. Id. Moreover, to the extent former CA employees revealed proprietary information to their new employer--an allegation Schlumberger denies--this is a matter of dispute between private parties and will not be considered by our Office. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. Finally, in the absence of any evidence of collusive bidding, none of the allegations raised by CA state violations of Schlumberger's certificate of independent price determination under Federal Acquisition Regulation § 52.203-02 (FAC 84-5). See Protimex Corp., B-204821, Mar. 16, 1982, 82-1 CPD ¶ 247.

Accordingly, the protest is dismissed.



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