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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Digital Techniques, Inc.

**File:** B-243795

**Date:** May 31, 1991

Patrick de Cavaignac for the protester.  
James K. White, Esq., and Stacia Davis Le Blanc, Esq.,  
Department of Commerce, for the agency.  
David J. Ervin, Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest based upon alleged solicitation impropriety is untimely when not filed until after quotations were due and award was made.

### DECISION

Digital Techniques, Inc. protests the award of a contract to Poseidon Systems under request for quotations (RFQ) No. Q113246, issued by the National Institute of Standards and Technology (NIST), Department of Commerce, for a computerized directory system for an administrative building. Digital alleges that the RFQ was defective since it failed to adequately document the agency's requirements.

We dismiss the protest as untimely.

The RFQ was issued on March 15, 1991, and specified the closing date for submission of quotations to be March 28. Copies of the RFQ were issued to three firms, two of which submitted quotations. Digital states that, on two occasions before the closing date, it indicated to NIST by telephone that the firm required additional information regarding the types of materials needed for the site map, the form of the database, and the source, form and quantity of the video and audio material. On April 5, Digital sent a letter to the NIST contracting officer explaining the difficulty the firm had in responding effectively to the RFQ because it did not describe the "specific functionality" required, and requesting an opportunity to demonstrate its system. NIST did not offer any additional details to Digital nor did it provide an opportunity for either of the offerors to demonstrate their products.

NIST awarded the contract on April 19 to Poseidon Systems, which had submitted the lower priced quotation. Digital filed a protest in our Office on April 26, alleging that the RFQ failed to adequately identify the agency's needs, thereby making it impossible for the firm to submit a quotation on an equal basis with the awardee, who Digital alleges received additional information. Digital further alleges it was wrongfully denied an opportunity to demonstrate its system to the agency.

This protest, filed after the closing date and award, is clearly untimely. Under our Bid Protest Regulations, a protest based on alleged improprieties in a solicitation, which are apparent on the face of the solicitation, must be filed prior to the closing date for receipt of quotations. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(1)); GM Plastics, Inc., B-235083, Apr. 24, 1989, 89-1 CPD ¶ 405. Here, Digital filed its protest on April 26, nearly 1 month after the closing date for all quotations on March 28, and 1 week after the contract was awarded on April 19.

Our Regulations include a timeliness requirement for protests based upon alleged solicitation improprieties to serve an important purpose--to enable the contracting agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. GM Plastics, Inc., B-235083, supra. A protest of an alleged defect in a solicitation filed after the closing date and, in this case, after the contract has been awarded, defeats this purpose. Whether or not Digital is familiar with our protest procedures does not change the fact that such a protest is untimely, since protesters are on constructive notice of our Regulations by virtue of their publication in the Federal Register. Rudd Constr. Inc., B-234936, Apr. 10, 1989, 89-1 CPD ¶ 367.

Digital asserts that it raised its challenges to the RFQ orally with NIST, prior to the closing date. In order to be effective, however, a protest must be made in writing and timely filed; an oral complaint is not sufficient. See 56 Fed. Reg. 3,759 supra (to be codified at 4 C.F.R. § 21.1(b)); Federal Acquisition Regulation (FAR) § 33.101; Riverside Research Inst., B-234844, Mar. 31, 1989, 89-1 CPD ¶ 340. Oral protests to an agency before filing a written letter of protest do not toll our timeliness requirements. Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

Digital further argues that the April 5 letter it sent to NIST should be given consideration in determining whether its protest is timely. To the extent that Digital contends that the letter constituted a protest to NIST, it failed to set forth a detailed statement of the legal and factual grounds of protest and request for a ruling, as required by FAR § 33.103(b)(3) for agency-level protests. Digital's letter of April 5 merely detailed the difficulty of responding effectively to an allegedly defective RFQ and requested an opportunity to demonstrate its system, and, as such, it did not constitute a protest. See Cajar Defense Support Co., B-238621, Feb. 26, 1990, 90-1 CPD ¶ 235. In any event, the letter was also sent after the closing date for receipt of quotations and is, therefore, itself untimely.

The protest is dismissed.

*Christine S. Melody*  
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