



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Constantine N. Polites & Co.--Reconsideration

**File:** B-233935.2

**Date:** February 17, 1989

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### **DIGEST**

Protester's letter to agency suggesting possible improvements to solicitation, received by agency before the closing date, does not constitute a protest because it lacks any expression of dissatisfaction indicating intent to protest.

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### **DECISION**

Constantine N. Polites & Co. requests that we reconsider our dismissal of its protest as untimely concerning request for proposal (RFP) No. N00181-89-R-0023, issued by the Norfolk Naval Shipyard.

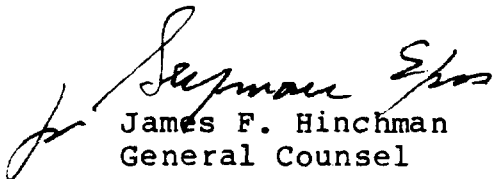
The RFP's closing date was December 14, 1988. On December 3, Polites, by telefax, "kindly requested that [the agency] give serious consideration to . . . possible changes which will be instrumental in increasing real competition [under the] solicitation." Polites' stated concerns related to creating a separate lot in the schedule for certain items and using a preaward survey, instead of bid samples, to determine which firm should receive the award. On December 9, the Navy mailed its response, which Polites apparently failed to receive until December 17, 3 days after the closing date. Polites then protested the terms of the RFP to our Office on December 21. Polites' protest substantially repeated the suggested changes it proposed in its December 3 letter to the agency. We dismissed Polites' December 21 protest because under 4 C.F.R. § 21.2(a)(1) (1988), Polites' allegations of improprieties in the RFP should have been filed with the agency or with our Office prior to the closing date.

Polites now asserts, for the first time, that its December 3 letter to the Navy constituted a timely filed agency-level protest.

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Although Polites sent a telefax to the agency prior to the closing date, the letter merely "kindly requested" certain "possible changes" to the solicitation. While a letter does not have to explicitly state that it is intended as a protest for it to be so considered, at a minimum the intent to protest must be conveyed by an expression of dissatisfaction and a request for corrective action. IBI Security Services, Inc., B-219713, Aug. 27, 1985, 85-2 CPD ¶ 235. Our review of the letter shows no indication of any intent to protest the terms of the RFP. Rather, the letter, in our view, was a routine letter from an offeror suggesting possible improvements for consideration by the agency. In this regard, where, as here, a letter contains merely suggestions or requests for clarifications, it does not constitute a formal protest. See generally Triple A Shipyards, B-213433, Apr. 6, 1984, 84-1 CPD ¶ 385.

Consequently, there was no protest filed by Polites prior to closing, with the result that the December 21 protest to us indeed was untimely. Our dismissal therefore is affirmed.

  
James F. Hinchman  
General Counsel