

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548*Odston
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30296***FILE:** B-217585**DATE:** January 25, 1985**MATTER OF:** Computer Dynamics Inc.**DIGEST:**

Protest to GAO concerning alleged solicitation defects is untimely where firm initially protested to the contracting agency prior to the closing date for receipt of proposals under the solicitation, but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested regarding solicitation defects, closing constitutes initial adverse action on the agency-level protest.

Computer Dynamics Inc. (CDI) protests solicitation No. KECS-84-010 for data processing facilities management at federal sites in Alaska, Idaho, Washington, and Oregon issued by the General Services Administration (GSA). CDI also protests GSA's failure to award CDI a contract under a prior solicitation (No. 10PN-HGS-0228) which contains a requirement for facilities management of the Federal Data Processing Center (FDPC) in Anchorage, Alaska, which was set aside for minority firms under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). CDI alleges that GSA wrongfully declined to award it a contract under the initial solicitation. CDI also asserts that the new solicitation contains substantially the same requirements as the original solicitation except that it does not provide for the 8(a) set-aside. CDI seeks award of the FDPC contract.

We dismiss the protest as untimely.

CDI alleges that the original solicitation requirement was set aside for CDI under the 8(a) program on June 27, 1983. On May 25, 1984, after extensive negotiations with CDI, GSA advised CDI it was canceling the original solicitation and that GSA intended to transfer the FDPC to the Bureau of Land Management (BLM). However, on August 10, 1984, GSA issued a new solicitation which included the facilities management requirement for Alaska which was covered under the original solicitation. The due date for

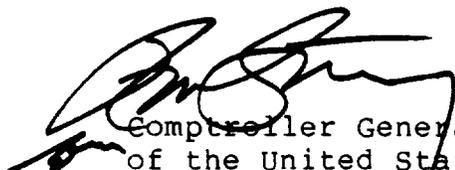
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receipt of proposals under this solicitation was September 10, 1984. On September 7, 1984, CDI filed a protest with GSA. In its protest to GSA, CDI alleged that the new solicitation was substantially the same as the original one, that the proposed transfer of the procurement from GSA to BLM, which had never been accomplished, was an attempt to circumvent the 8(a) set-aside process, and that the cancellation of the initial solicitation was improper and violated Small Business Administration regulations and the spirit and the intent of the Small Business Act.

GSA responded to this protest by letter of November 16, 1984, but apparently the response was misaddressed and was not received by CDI until after January 8, 1985. On January 14, 1985, CDI filed its protest with our Office.

Section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. part 21 (1984), requires that, if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive notice of initial adverse action." The quoted phrase is a term of art that is construed to include knowledge that the agency proceeded with a bid opening or closing in the face of the protest. Ray Service Company, B-215959, Aug. 14, 1984, 84-2 C.P.D. ¶ 181; Central Air Service, Inc., B-213205, Feb. 6, 1984, 84-1 C.P.D. ¶ 147. Here, since the protest to our Office was filed (received) on January 14, 1984, more than 10 working days after closing occurred on September 10, 1984, the protest is untimely. Furthermore, the fact that an agency later formally denies an agency-level protest, as GSA did here, does not alter the firm's responsibility to conform to the filing requirement of our Bid Protest Procedures in protesting to our Office. Ray Service Company, B-215959, supra.


Comptroller General
of the United States