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**DECISION**



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

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FILE: B-192698

DATE: January 22, 1979

MATTER OF: Varian Graphics

DLG 00713

**DIGEST:**

*[Protest is untimely when filed 4 days after revised date for submission of proposals]*

Protest filed 4 days after revised closing date for submission of proposals against allegedly unreasonable time allowed for preparation of response is untimely under § 20.2(b)(1) of Bid Protest Procedures.

Varian Graphics (Varian) protests any award under request for proposal 5-50348/036 issued by the National Aeronautics and Space Administration (NASA). Varian contends that the revised date set for submission of final proposals, August 14, 1978, did not allow sufficient time for preparation of an adequate response. In its report to our Office NASA contends that the protest is untimely.

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On August 10, 1978, Varian was notified by the contract specialist that negotiations were reopened and that August 14, 1978, was the revised closing date. Varian contends that it orally requested on this date that the due date be extended and that "NASA's procurement representative refused to extend the due date to allow a proper response." The contract specialist, however, states that on August 10 Varian agreed to the revised closing date and that Varian protested to NASA by letter on August 18, 1978. While Varian denies that there was a mutual agreement concerning the new closing date, its Eastern sales manager in response to NASA's report stated, "It appeared to me that she was simply not going to give me time to respond so I did not press further."

Where the only evidence before our Office with respect to a disputed question of fact consists of contradictory statements by the protester and the contracting agency, the protester has failed to carry the burden of affirmatively proving its assertions.

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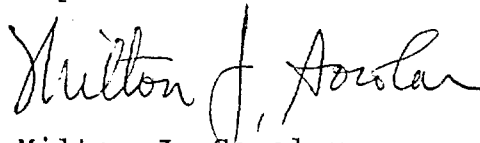
Telectro-Mek, Inc., B-185892, July 26, 1976, 76-2 CPD 81. Based on the record before us, we conclude that Varian did not protest the revised closing date until August 18, 1978, 4 days after the revised date for submission of proposals had passed.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), provide in pertinent part:

"\* \* \* In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation."  
(Emphasis supplied.)

Varian's contention that it did not have sufficient time under the revised date to prepare an adequate response concerns an alleged impropriety incorporated into the solicitation. Dynatrend Incorporated, B-190886, March 16, 1978, 78-1 CPD 213. Varian's failure to protest before the revised closing date renders its protest untimely.

Accordingly, the protest will not be considered.



Milton J. Socolar  
General Counsel