



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Caldwell Consulting Associates

File: B-222583.2

Date: December 4, 1986

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### DIGEST

Protester's allegation that it was denied an adequate opportunity to discuss its proposal is dismissed as untimely since it constitutes an alleged solicitation impropriety of which protester knew or should have known prior at the time of termination of discussions and request for best and final offers which occurred 5 to 6 weeks prior to protester's filing with General Accounting Office.

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### DECISION

Caldwell Consulting Associates protests the award of a contract under request for proposals (RFP) No. IRS 86-14001 issued by the Internal Revenue Service (IRS) for basic procurement training services. Caldwell contends that, in violation of federal procurement regulations, it was not given an adequate opportunity to discuss its proposal, although it was advised that it was in the competitive range. The protester also claims proposal preparation and bid protest costs.

The protest is dismissed without obtaining a full agency report since it is clear from documentation presented to our Office by the IRS that the protest is untimely. 4 C.F.R. § 21.3(f) (1986).

The documents submitted by the agency show that by letter dated October 2, IRS notified the protester that negotiations were being reopened" in accordance with a legal recommendation that we allow all offerors within the competitive range an opportunity to submit [second] 'best and final offers' [BAFOs], in writing, based on recent revisions to" the Federal Acquisition Regulations (FAR), 48 C.F.R. § 15.611.1/

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1/ We are advised by the IRS that each offeror in the competitive range was sent the identical letter and telephonically advised of deficiencies in its proposal.

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That letter was followed by another, dated October 6, in which the IRS informed Caldwell that negotiations on the solicitations "are now closed and no further discussions will be held" and requested Caldwell's BAFO on its previously submitted proposal no later than 4 p.m. on October 10. On October 7, Caldwell responded to the IRS' October 2 letter by confirming that its offer as submitted on July 10 remained in effect and by forwarding additional information concerning the firm's experience.

Caldwell did not file its protest with us until November 17, following its November 4 receipt of a letter from the IRS in which the agency advised of its intent to make award to another firm. Caldwell's protest is based on an assumption that it was not given an adequate or equal opportunity to discuss deficiencies in its proposal.

The IRS maintains, and we agree, that Caldwell's protest is untimely since the protester knew on or about October 6 that negotiations on the solicitation were closed, yet it did not protest this matter in our Office until 5 to 6 weeks later, after it received notice of the agency's intention to award the contract to Caldwell's competitor. Our Bid protest Regulations require that protests against alleged solicitation improprieties be filed prior to the closing date, as where the alleged improprieties, such as a request for BAFOs, is incorporated into the solicitation by amendment, and is thus apparent prior to the closing date. 4 C.F.R. § 21.2(a)-(1).

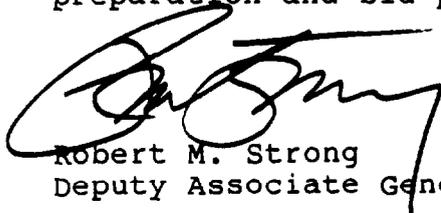
Since the protester was aware of the basis of its protest, at the latest, when it received the IRS' October 6 letter, its protest filed here 5 to 6 weeks later is untimely. American Management Systems, Inc., B-224393, Aug. 26, 1986, 86-1 C.P.D. ¶ 229 at 3-4.

Although the protester contends that its protest is timely, Caldwell states that even if it is untimely it merits considerations by our Office under the provisions of 4 C.F.R. § 21.2(c), because it raises an issue significant to the procurement system.

The significant issue exception to our timeliness rules will be invoked only where the subject matter of the protest is of widespread interest or importance to the procurement community and involves a matter which has not been considered on

the merits in a previous decision of this Office. Taurio Corp., B-219008.2, July 23, 1985, 85-2 C.P.D. ¶ 74. The subject matter of this protest--the adequacy of agency discussions of the protester's proposal prior to requesting a second and final round of best and final offers--is a matter which we have previously considered (see Action Manufacturing Co., B-222151, June 12, 1986, 86-1 C.P.D. ¶ 546), and since it only involves a determination with respect to a particular proposal, we do not consider Caldwell's challenge to the adequacy of the agency's discussion of its proposal to involve an issue of significance to the federal procurement system. Professional Review of Florida, Inc.; Florida Peer Review Organization, Inc., B-215303.3, B-215304.4, Apr. 5, 1985, 85-1 C.P.D. ¶ 394.

We dismiss the protest and deny the claim for proposal preparation and bid protest costs.



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