



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Concepts to Operations, Inc.

**File:** B-248606

**Date:** September 10, 1992

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## DECISION

Concepts to Operations, Inc. (CTO) protests allegedly ambiguous specifications and an unreasonable time period allowed for the submission of best and final offers (BAFOs) under request for proposals (RFP) No. N00600-92-R-0291, issued by the Naval Regional Contracting Center (NRCC), Department of the Navy, to provide the Navy Electromagnetic Spectrum Center with technical support for electromagnetic spectrum management services.

We dismiss the protest as untimely.

The solicitation, issued on November 1, 1991, sought research and documentation review services to obtain spectrum management information and the subsequent dissemination of such information to all levels of spectrum managers on a quarterly basis. Two offerors submitted proposals by the amended January 16, 1992, closing date. In its proposal, CTO noted two allegedly inconsistent solicitation provisions.

By letter dated March 19, NRCC notified CTO that its proposal had been evaluated and determined to be technically acceptable. NRCC informed CTO, however, that certain aspects of its proposal required verification, and asked CTO to submit a revised cost proposal to the agency. During a telephone conversation with agency personnel on March 19th or 20th, the agency clarified which elements of CTO's proposal required verification, at which time CTO requested additional time to verify these prices. The date for receipt of price verification was extended to Monday, March 23. The extension was confirmed in a letter dated March 20, which also stated that: "[a]t this time, discussions are concluded. If you choose to submit a revised cost proposal it is considered a 'Best' and 'Final' offer." CTO received this letter at 3:03 p.m. on March 20.

Both offerors timely submitted BAFOs by the extended March 23 due date. By letter dated March 26, NRCC informed CTO that Televue Incorporated was the apparent successful offeror. On March 31, CTO filed a protest with the Navy asserting that the solicitation contained inconsistencies involving the number of disseminations required and that CTO was not given enough time to prepare its BAFO. The Navy dismissed the protest as untimely on April 21. On May 5, CTO filed this protest with our Office.

Under our Bid Protest Regulations, where, as here, a protest is filed first with the contracting agency, a subsequent protest to our Office will be considered only if the initial agency-level protest was timely. 4 C.F.R. § 21.2(a)(3) (1992); Mobile/Modular Express, B-246183, Nov. 13, 1991, 91-2 CPD ¶ 459. To be timely under our Regulations, a protest concerning an alleged apparent solicitation impropriety must be filed either with this Office or with the contracting agency before the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1); Mobile/Modular Express, supra. Since CTO believed there was an inconsistency or ambiguity in the solicitation, which CTO points out was clear from its face, CTO was required to protest prior to the amended January 16 closing date for receipt of initial proposals. Sea Corp., B-244380, July 12, 1991, 91-2 CPD ¶ 51. CTO did not protest to the Navy until March 26, after it learned that it was not the successful offeror; thus, the initial agency-level protest was untimely.<sup>1</sup>

As to its protest concerning the time allowed to submit a BAFO, CTO argues that it could not have filed a protest in the short period of time between the receipt of the request for BAFOs and the closing date. In this respect, the protester argues that since the BAFO request was received in its office on March 20, a Friday, it could not have acted until Monday, March 23, leaving only 1 working day or 3 calendar days until the due date, which CTO asserts was insufficient time to prepare a protest. We do not agree. In similar situations, we have found that a period of 2 days afforded an offeror is a reasonable time to file a protest before bid opening or the closing date for receipt of proposals. See Mobile/Modular Express, supra; R&B Equip. Co., B-219560.2, Sept. 5, 1985, 85-2 CPD ¶ 272. We see no

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<sup>1</sup>CTO's objection in this regard which accompanied its initial proposal did not constitute a protest. Our Office does not regard a protest included in a proposal as a timely pre-opening protest to the agency, since there is no requirement that an agency open or read proposals on or before the closing date. Paramount Sys., Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646

reason why 3 days was insufficient to prepare and submit a statement of CTO's fairly uncomplicated protest grounds, particularly since the protester was able to prepare and submit a timely BAFO in that time period. See R. T. Nelson Painting Servs., Inc.--Recon., B-227953.2, Feb. 26, 1988, 88-1 CPD ¶ 198.

Since neither aspect of CTO's initial protest was timely filed with the Navy, CTO's subsequent protest to our Office is not for consideration as it also was untimely filed.

The protest is dismissed.



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