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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: New SI, LLC

File: B-295209; B-295209.2; B-295209.3

Date: November 22, 2004

W. Jay DeVecchio, Esq., and Lianne E. S. Cottingham, Esq., Miller & Chevalier, for the protester.

David R. Hazelton, Esq., Edward J. Shapiro, Esq., Tammi D. Walker, Esq., and Gregory A. Harris, Esq., Latham & Watkins, for Orbimage, Inc., an intervenor.

Howard Phifer, Esq., and William R. Medsger, Esq., National Geospatial-Intelligence Agency, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Absent clear indication from agency that scheduled debriefing session was considered to be extended pending agency's response to questions that protester might pose following the session, the debriefing is presumed to have ended at the conclusion of the session; protester's posing questions to agency after the session concluded therefore did not extend time for filing a bid protest, and protest filed more than 10 days after the session thus is dismissed as untimely.

DECISION

New SI, LLC protests the National Geospatial-Intelligence Agency's (NGA) award of a contract to Orbimage, Inc., under request for proposals (RFP) No. HM1573-04-R-0002, for NextView commercial satellite imagery services. New SI challenges the agency's evaluation of its proposal.

We dismiss the protest.

On September 30, 2004, New SI was notified of the award to Orbimage. Later that day, New SI submitted a written request to the agency for a debriefing. NGA provided a debriefing on October 6, during which New SI was advised of the agency's evaluation process, the ratings and scores on the factor and subfactor level for New SI's proposal, and the weaknesses, strengths and risk assessments for New SI's proposal. In addition, the agency answered a number of questions asked by New SI. The next day, October 7, New SI submitted written questions to the agency. The

agency furnished a response on October 15. On October 20, New SI filed this protest with our Office, contending that its proposal improperly was downgraded under the solicitation's [DELETED] evaluation factor for a perceived weakness with respect to [DELETED], since that weakness already had been taken into account under the [DELETED] evaluation factor.

NGA requests that we dismiss the protest as untimely, since it was filed 14 days after New SI's debriefing session on October 6. New SI responds that October 6 should not be the point from which timeliness is measured, since the debriefing did not provide the information on which its protest is based and, in any case, was not complete until October 15, when the agency provided responses to the protester's October 7 questions.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest, with an exception for protests that challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. 4 C.F.R. § 21.2(a)(2) (2004). In such cases, protests must be filed not later than 10 days after the date on which the debriefing is held. Id.

We agree with the agency that, since New SI's protest was not filed with our Office until more than 10 days after the debriefing session concluded, it is untimely. First, contrary to New SI's assertion, it is clear from the October 7 written questions that the protester was made aware of the basis for its October 20 protest during the October 6 debriefing. Specifically, New SI referred to the issue of improper double-counting, asking that the agency

[p]lease explain in detail the Government's rationale for downgrading the New SI proposal ratings in both the [DELETED] based upon the identical perceived risk associated with New SI's [DELETED]. It appears as if we were inappropriately downgraded . . . in at least two areas for the identical perceived deficiency.

New SI Questions, Oct. 7, 2004, Question No. 7. Thus, New SI was on notice from the debriefing session that [DELETED] had been considered under both the [DELETED] and [DELETED] evaluation factors, the action challenged as improper in its protest.

Further, we do not agree that the debriefing was essentially ongoing pending the agency's answering the protester's October 7 questions. Although the record indicates that NGA did not answer all of New SI's questions at the debriefing session, and New SI maintains that there was "no statement by any NGA representative that the debriefing process was concluded at the end of the October 6, 2004 meeting," Declaration of New SI Chief Executive Officer, Nov. 5, 2004, at 2, neither was there

any affirmative indication by the agency that the debriefing would be considered concluded only after the agency responded to further questions the protester might have after the October 6 session. In fact, the source selection authority (SSA) states that the contracting officer informed New SI at the beginning of the debriefing that “if it had any remaining questions after the debriefing was finished . . . New SI could submit written questions to the Contracting Officer after the debriefing.” Declaration of SSA, Nov. 5, 2004, at 1-2 (underlining added). It is clear from this statement that the agency considered the debriefing “finished” at the conclusion of the October 6 session, notwithstanding that it was willing to answer further questions the protester might have. Given the absence of any affirmative indication from the agency that the debriefing would remain open after the scheduled session, we consider it to have concluded at the end of that session. The fact that New SI may not have been satisfied with all aspects of the debriefing, and that it continued to pursue certain questions with the agency, did not extend the time for filing a bid protest based on the information provided during the debriefing. See Handheld Sys., Inc., B-288036, Aug. 10, 2001, 2001 CPD ¶ 142 at 2 (protester’s continued questions to the agency following a debriefing did not extend the time for filing a bid protest). Since New SI’s protest was filed more than 10 days after it learned of the basis for the protest on October 6, the protest is untimely.

On November 15, New SI filed a supplemental protest based on an anonymous letter it received on November 10, which stated, without elaboration, that the company “needs to pursue this matter to the end” because “[t]he entire process was tainted,” and that New SI should “[i]nterview all team members.” The letter lacks any specific indication that the agency violated procurement statutes or regulations. While the letter may provide a basis for further investigating the matter, our Office does not conduct investigations as part of our bid protest function. Charleston Marine Containers, Inc., B-283393, Nov. 8, 1999, 99-2 CPD ¶ 84 at 4.

The protest is dismissed.

Anthony H. Gamboa
General Counsel