



## Decision

**Matter of:** M2 Global Technology, Ltd.

**File:** B-400946

**Date:** January 8, 2009

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Douglas F. Carlberg for the protester.  
Howard B. Rein, Esq., Department of the Navy, for the agency.  
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest to GAO of the exclusion of the protester's proposal from the competitive range is untimely filed, where the matter was initially protested to the contracting agency but was not filed with the agency within 10 days of the date that the protester learned the basis of its protest; the exception in GAO's Bid Protest Regulations for filing a protest with GAO after receipt of a required debriefing does not apply to filing an agency-level protest, the timeliness of which is governed by the Federal Acquisition Regulation.

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### DECISION

M2 Global Technology, Ltd. of San Antonio, Texas, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N68335-08-R-0013, issued by the Department of the Navy for a new land-based, mobile electric power plant (MEPP). M2 complains that the Navy unreasonably evaluated the firm's proposal and did not recognize that its high-priced offer reflected the best value to the agency.

We dismiss the protest because the initial protest to the agency was not timely filed.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest, of other than an alleged apparent solicitation impropriety, must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2008). Further, a matter initially protested to the contracting agency will be considered timely by our Office only if the initial agency-level protest was filed within the time limits provide by the Regulations for filing a protest with our

Office unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. 4 C.F.R. § 21.2(a)(3). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.–Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, on November 6, 2008, M2 received a detailed letter from the Navy informing the firm that its proposal was excluded from the competitive range and the reasons for that exclusion. Specifically, M2 was informed that its technical rating was unsatisfactory with high risk, based upon ratings its proposal received under the technical approach, logistics, and management subfactors, and specifically detailed the reasons for the Navy's unacceptable ratings under these subfactors. Among other things, M2 was informed that its proposed engine design was unproven and that it had failed to show that its proposed MEPP satisfied all of the solicitation requirements.<sup>1</sup> The Navy also informed M2 that its proposed price was considerably higher than the independent government cost estimate and the other offerors' prices.

On November 7, M2 requested a pre-award debriefing, which was telephonically provided to M2 on November 20. Thereafter, on November 26, M2 filed an agency-level protest with the Navy, challenging the Navy's technical rating of the firm's proposal and failure to consider M2's "best value" solution, albeit at a higher price. On December 11, the Navy dismissed M2's agency-level protest as untimely, because the protest was not filed within 10 calendar days of the Navy's November 6 letter to M2, and no additional information was provided to M2 in the Navy's telephonic debriefing. On December 17, M2 protested to our Office.

We agree with the Navy that the November 6 letter to M2 informed the firm of the reasons its proposal was excluded from the competitive range, and that a protest of that exclusion was required to be filed within 10 calendar days of that date. In this regard, we disagree with M2 that it could not know the basis of its protest until its debriefing, when the firm allegedly learned that "the Navy did not consider the ability for a MEPP to support other Navy aircraft and the Joint Strike Fighter as part of the 'Best Value' criteria in the solicitation." See Protester Response to Agency Dismissal Request, Dec. 30, 2008, at 1. As explained above, M2 knew from the November 6 letter the reasons that the Navy considered the firm's proposal to be technically unacceptable. The Federal Acquisition Regulation (FAR) provides that protests filed with the contracting agency, of other than solicitation improprieties, must be filed no later than 10 days after the basis of protest is known or should have been known. FAR § 33.103(e). Because M2's agency-level protest was not filed until November 26, more than 10 days from the firm's receipt of the November 6 letter, the agency-level protest was not timely filed in accordance with the FAR's timeliness rules for filing

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<sup>1</sup> The November 6 letter also identified assessed strengths in M2's design.

protests with the agency. Accordingly, M2's protest to our Office subsequent to the firm's agency-level protest cannot be considered timely and is therefore dismissed. 4 C.F.R. § 21.2(a)(3).

We recognize that our Bid Protest Regulations provide an exception to the general, 10-day rule for filing a protest at GAO that challenges "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); The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 28. In those cases, where the protest is filed with our Office with respect to any protest basis which is known or should have been known either before or as a result of the requested and required debriefing, the protest cannot be filed before the debriefing date offered, but must be filed not later than 10 days after the date on which the debriefing is held. Id. This exception to the 10-day rule, however, does not apply to a protest, such as M2's, which is filed with the agency. As noted above, the rules for timely filing an agency-level protest are established by the FAR, and not GAO's Bid Protest Regulations. Under the FAR, protests of other than alleged solicitation improprieties are required to be filed within 10 days after the basis of protest is known or should have been known, and the FAR does not contain a "required debriefing" exception to this 10-day rule. See FAR § 33.103(e). Because, under the circumstances presented here, the FAR contains a more stringent time for filing a protest with the agency than that provided for filing a protest with GAO, M2's protest to our Office is untimely pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3).

The protest is dismissed.

Gary L. Kepplinger  
General Counsel