



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Simula Government Products, Inc.

**File:** B-274730

**Date:** December 9, 1996

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Michael D. Guinan, Esq., and John T. Jones, Jr., Esq., Bryan Cave LLP, for the protester.

Howard J. Stanislawski, Esq., Melvin Rishe, Esq., Gary P. Quigley, Esq., and Richard L. Larach, Esq., Sidley & Austin, for Israel Aircraft Industries, Ltd., an intervenor.

Daniel A. Laguaite, Esq., Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where Commerce Business Daily (CBD) notice announcing agency's intent to modify a contract contains note 22--giving other potential sources 45 days to submit expressions of interest showing their ability to meet agency's stated requirements--a potential source must first timely respond to the CBD notice and receive a negative agency response before it can protest the agency's decision at the General Accounting Office; protest of modification is dismissed where, in response to note 22, protester submitted to the agency only a statement that it considered itself to be a responsible source for the requirements, without any supporting information to demonstrate its capability; where the items required are of a relatively complex nature, as in this case, such a response is inadequate to meet the requirements of note 22.

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## DECISION

Simula Government Products, Inc. protests the proposed modification of Department of the Navy contract No. N00421-96-C-1038, awarded to Israel Aircraft Industries, Ltd. (IAI) on June 14, 1996, for non-developmental item (NDI) crashworthy passenger/troop helicopter seats.

We dismiss the protest.

On September 13, 1996, the Navy announced in a Commerce Business Daily (CBD) synopsis its intention to modify IAI's contract to add or modify certain requirements: (1) 50 additional IAI NDI crashworthy CH-53 helicopter seats; (2) turnkey installations of those seats in the CH-53D, CH-53E, and CH-53ME helicopters; (3) airframe reinforcement kits; (4) a change in the attachment pin

chains to braided cable; and (5) stress analysis on the proposed seat and attaching hardware. The CBD notice stated that IAI was judged the only responsible source able to satisfy the requirement, and referenced note 22, which gave interested persons 45 days to identify their interest and capability to respond to the requirement or submit proposals.

By letter of September 23, Simula responded to the notice with a letter that stated as follows:

"Please be advised that Simula Government Products, Inc., considers itself to be a responsible source for this procurement."

The letter contained no further information. Also by letter dated September 23, Simula filed this protest with our Office, claiming that the modification of IAI's contract amounted to an unjustified sole-source procurement, because Simula is a responsible source which can meet the requirement.

As a prerequisite to our considering a protest of a note 22 intended sole-source procurement, the protester must have both timely submitted an adequate response to the notice, and received a negative agency response. Allerion Inc., B-256986, Apr. 28, 1994, 94-1 CPD ¶ 281; Norden Sys., Inc., B-245684, Jan. 7, 1992, 92-1 CPD ¶ 32. This procedure gives the agency an opportunity to reconsider its sole-source decision in light of a serious offeror's preliminary proposal, while limiting challenges to the sole-source decision to diligent potential offerors. Allerion Inc., supra; DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514. In this regard, where a complex requirement is involved, a mere expression of interest in the procurement does not meet the requirements of note 22--an adequate response must at least detail the offeror's ability to meet the requirement; what is actually contemplated is a preliminary proposal which could lead the agency to reconsider the sole-source decision. See Litton Computer Servs., B-256225.4; B-256225.5, July 21, 1994, 94-2 CPD ¶ 36; Norden Sys., Inc., supra.

We find that the requirement here--for crashworthy helicopter seats and related items and services--is sufficiently complex that a mere expression of interest was insufficient to satisfy the requirements of note 22. Again, Simula submitted only an undocumented, unexplained assertion that it could meet the requirement. This assertion did not serve the purpose of note 22--it did not provide the agency with any information showing that the agency's conclusion that there was only one source for the requirement was incorrect. Specifically, it did not explain how Simula was capable of furnishing and installing IAI seats and related items. Without such information, the agency had no reason to change its conclusion that only IAI, the manufacturer of the IAI seats, could furnish and install the required seats.

Simula argues that it possesses an acceptable NDI seat and that contracting officials were aware of its capability--notwithstanding its failure to provide supporting information with its expression of interest--based on its participation in the competition for the original (IAI) contract. However, the purpose of the proposed modification is to obtain a quantity of the IAI seats for testing to determine whether to exercise options to purchase 2,445 seats under IAI's contract; thus, IAI seats are required, and the agency's sole-source determination was based on its consideration of whether any firm other than IAI could furnish and install IAI seats. In competing for award of the original contract, Simula offered its own seat, not an IAI seat. Thus, even if the agency was aware that Simula is capable of furnishing an acceptable crashworthy seat (it is not clear that this capability was evident, since Simula's offered seat under the original procurement was found technically unacceptable for failure to meet the NDI requirement), it had no reason to believe that Simula would or could furnish and install an IAI seat if the firm were included in a competition. We note that, despite Simula's general claim that it can meet the requirement, it has not claimed that it can provide the IAI seat, or addressed the Navy's assertion that it cannot provide IAI seats.

As Simula did not timely submit an adequate response to the CBD notice, we will not consider its protest of the proposed modification.<sup>1</sup>

The protest is dismissed.

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<sup>1</sup>Although the Navy argued that Simula's protest should be dismissed for failure to adequately respond to note 22 in its October 21 report, Simula did not rebut this argument until November 18. During a telephone conference on that date, Simula cited a footnote in our decision Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490, in which we suggested that, under the proper circumstances, a protest may be filed without a prior response to note 22 where it is clear that the agency is so firmly committed to a sole-source procurement that an expression of interest would be futile. While Simula invokes this dictum as an exception to the general rule, it has not stated the basis for, or otherwise supported, its conclusion that the Navy is immovably committed to a sole-source contract. In any case, this argument is untimely, since it was not raised within 10 days after Simula became aware of the agency's position. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)).