

**DECISION**

208711  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-209986**DATE:** August 2, 1983**MATTER OF:** McCotter Motors, Inc.**DIGEST:**

1. GAO has no reason for objecting to a solicitation provision that limits the amount of parts that the contractor may ship via Military Airlift Command to 1,000 pounds per week. The provision would not likely mislead offerors concerning the anticipated turnover of stock since the solicitation also contained the Government's estimate of parts needed based on expenditures for the previous year.
2. A solicitation provision indicating those holidays on which operation of a Contractor Operated Parts Store (COPARS) would not be required was not ambiguous, and is therefore unobjectionable.
3. GAO has no basis for objecting to a solicitation provision that gives the Government the right to examine a contractor's records, in the absence of a statute or regulation prohibiting such a provision, or of proof that it adversely affected competition.
4. Agency was not obligated to include in its solicitation for operation of a COPARS in Panama certain logistical information regarding Government services available to its employees and information regarding the impact of the Canal Treaty and Panamanian labor and tax laws because the logistical information was not essential to the preparation of an intelligent offer, and an agency is not obliged to act as legal advisor to prospective offerors.
5. A protester that did not submit a proposal under the solicitation would not be eligible for award even if its protest against the contract award procedures were sustained. Thus, the protester is not an interested party under GAO Bid Protest Procedures.

026311

McCotter Motors, Inc. protests a number of provisions included in request for proposals (RFP) No. F66501-83-R0007 issued by the Air Force and the award of a contract under that solicitation to Econopartes S.A. The solicitation called for proposals for the operation of a Contractor Operated Parts Store (COPARS) at Howard Air Force Base, Panama. The contractor is to operate under a requirements contract for furnishing automotive and related vehicle parts and accessories for the Base's vehicle fleet and miscellaneous equipment. For the reasons indicated, the protest is denied in part and dismissed in part.

#### Air Freight Allocation

The solicitation provided that the COPARS contractor would be authorized to ship certain portions of its inventory to Howard AFB on Air Force aircraft through Charleston AFB, South Carolina, on a reimbursable basis. The agency provided this authority for initial stock sufficient to establish the store and for a maximum of 1,000 pounds of parts per week. Except for this authority, the Government assumed no responsibility for transportation. The protester contends that the 1,000-pound limitation is not adequate, and that it knows from its experience as the incumbent that at least 2,000 pounds per week is necessary to maintain stock. In imposing an inadequate weight limitation, the protester claims, the solicitation could mislead offerors concerning the turnover of stock and thus have a material impact on prices.

The Air Force responds that the contractor is ultimately responsible for transportation and delivery of parts and that the allocation of space on Military Airlift Command (MAC) planes is merely one alternative means of transportation, intended primarily to promote the timely delivery of needed parts. The 1,000-pound allocation is reasonable, says the agency, and has been in effect for the last 5 years without objection.

We find no reason to object to the 1,000-pound weight limitation. As noted by the agency, the Government is under no obligation to provide transportation, and could just as well have omitted altogether the option to ship via MAC. Moreover, the possibility of misleading prospective offerors appears remote since the solicitation contained the Government's estimates of parts needed based on expenditures for the previous year. We think it unlikely

that offerors would rely on the weekly weight limitation rather than the Government estimates as an indication of expected requirements.

#### Holiday Operation

The solicitation provided that the contractor would be required to operate the store during the normal 8-hour workday on weekdays and, upon advance notice, at such other times as might be required. The solicitation provided further that "the contractor will not be required to operate the store on the days the following Federal Holidays are observed that have an asterisk beside it." Nineteen days were listed, 11 of which were accompanied by asterisks. The protester contends that the meaning of this provision is unclear since there is no indication of whether operation of the store would be required on the 8 days listed but not accompanied by asterisks. The agency explains that these latter days are Panamanian holidays, which are regular workdays for Canal Area organizations.

Although, as the agency concedes, the holiday provision could have been drafted more clearly, we believe the only reasonable reading of the provision is that operation of the store would not be required on those listed days indicated by asterisks, and that for days listed with no asterisks, normal operation would be required. Further, we note that the agency provided McCotter with its explanation of this provision prior to the date for submission of initial proposals. In our view, it would have been unreasonable for a prospective offeror to conclude that operation of the store would not be required on those days listed but not accompanied by asterisks. Finding no ambiguity, we have no basis to object to the holiday provision. Atterton Painting, Inc., B-208088, January 18, 1983, 83-1 CPD 60.

#### Access to Records

The solicitation provided at Special Provision 13 that until 3 years after final payment on the contract, the Government will have the right to examine the contractor's "records, books, documents, and other evidence and practices in order to substantiate the validity of all transactions involving all items sold under this contract." The protester challenges this provision because

it (1) is unnecessary in light of other audit provisions of the solicitation, (2) discriminates against COPARS contractors, and (3) is overly broad and may have a chilling effect on prospective offerors.

The agency contends that Special Provision 13 is merely a restatement of two mandatory clauses, Defense Acquisition Regulation (DAR) § 7-104.15 (granting the Comptroller General or his representatives access to a contractor's books, documents, papers and records that are directly pertinent to a negotiated contract in excess of \$10,000) and DAR § 7-104.41 (granting the contracting officer or his representative audit and inspection rights in specific situations). The solicitation incorporates both of these clauses by reference. There is also some suggestion in the agency report that Special Provision 13 was inserted in the solicitation as a result of previous experience with COPARS contracts.

It does not appear, as the agency argues, that Special Provision 13 merely restates the provisions of the mandatory clauses. Nevertheless, we have no objection to the inclusion in the solicitation of Special Provision 13. The provision simply reflects the agency's business judgment that such access to the contractor's records is desirable as being in the best interest of the Government. We are unaware of any statute or regulation that would bar the provision, nor has the protester offered any evidence that suggests that competition was adversely affected. In the absence of a statute or regulation prohibiting such a provision, or of proof that it adversely affected competition, and in view of the agency's judgment that this type contract needs additional scrutiny, we have no basis to object to this particular access provision. See B-169589, November 25, 1970.

#### Logistical and Legal Information

The protester contends that the solicitation is defective in that it does not contain adequate logistical information--for example, the availability of on-base housing and commissary privileges--or any information concerning the application of Panamanian law in such areas as labor relations and taxation. The protester also argues that because the Government was a party to the Panama Canal Treaty, it has exclusive knowledge concerning the impact of the Treaty on Panamanian law. The failure to provide adequate logistical and legal information, says the protester, prevents the submission of realistic,

intelligent proposals and gives an unfair competitive advantage to offerors from Panama. The agency responds by noting that the RFP contained Special Provision 15, entitled "Government-Furnished Facilities, Equipment and Utilities," which listed everything to be provided by the Government and stated that all additional equipment and supplies would be the responsibility of the contractor. With respect to the application of Panamanian law, the agency states that it was the prospective contractor's responsibility to obtain and evaluate this information and that the agency could only provide the name and address of the Panamanian Ministry of Labor and Social Welfare.

A solicitation must contain sufficient information to allow offerors to compete intelligently and on equal terms. John J. Moss, B-201753, March 31, 1981, 81-1 CPD 242. There is no obligation on the Government's part, however, to try to equalize competitive advantages accruing from individual offerors' particular business circumstances, General Electric Information Service Company, B-190632, September 21, 1979, 79-2 CPD 209, nor is a procuring agency required to remove every uncertainty from every prospective offeror's mind. Security Assistance Forces & Equipment International, Inc., B-199366, February 6, 1981, 81-1 CPD 71.

The additional logistical information that the protester says should have been included in the solicitation essentially relates to matters of primary concern to store personnel. While this information might be of interest or even helpful to the prospective COPARS contractor, we fail to see how this information can be viewed as essential to the preparation of an intelligent offer. On the other hand, although knowledge of the impact of Panamanian law would seem to be necessary in preparing a response to the RFP, we do not believe that the agency must act as a legal adviser to prospective offerors. Moreover, there is no indication in the record the agency possessed superior knowledge in this area.

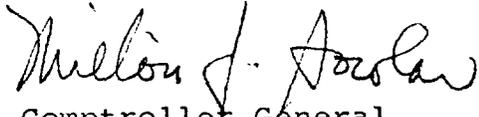
#### Award Objections

McCotter raises several objections to the Air Force's award of a contract to Econopartes notwithstanding the pending protest. The protester contends that Econopartes was not the apparent low offeror, and notes several alleged nonconforming elements in Econopartes' proposal.

In addition, McCotter states that Econopartes' best and final offer was solicited and due on the same day (thus not providing all offerors with an equal opportunity to submit a best and final offer).

Under our Bid Protest Procedures, a party must be "interested" before we will consider its protest allegations. 4 C.F.R. § 21.1(a) (1983). Since McCotter did not submit a proposal under this solicitation it would not be eligible for award were we to resolve these issues in its favor. Consequently, McCotter is not an interested party under our procedures as far as these objections to the award to Econopartes are concerned and we will not consider them. See Anderson Hickey Company, B-210252, March 8, 1983, 83-1 CPD 235.

The protest is denied in part and dismissed in part.

for   
Comptroller General  
of the United States