

DECISION



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

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FILE: B-214664 **DATE:** December 26, 1984
MATTER OF: Rapid America Corp.

DIGEST:

1. A request for clarification of an ambiguous provision or an objection to an alleged impropriety in a solicitation which is apparent before the closing date for the receipt of initial proposals must be filed with GAO or the contracting agency by that date.
2. An agency is not obligated to disclose the subfactors of a particular evaluation factor if there is a sufficient correlation between the detailed evaluation factors used and the factor listed in the solicitation.
3. The fact that a firm may enjoy a competitive advantage by reason of incumbency does not provide a basis to sustain a protest absent a showing of unfair action by the government.
4. New grounds of protest must independently satisfy the timeliness requirements of GAO's Bid Protest Procedures. Where a protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for it should have been known, the new ground is untimely and GAO will not consider it on the merits.

Rapid America Corp. protests the award of a lease to 370 Office Associates (Lessor) pursuant to General Services Administration (GSA) solicitation for offers No. MPA 82876. GSA sought 35,550 net usable square feet of office and related space in Broomall, Pennsylvania to house the U.S. Forest Service for a 10-year period; the Forest Service has occupied this space since 1978. The lease was awarded by GSA under the authority of the Federal Property and Administrative Services Act, as amended, 40 U.S.C. § 490(h)(i) (1982).

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In its timely protest, filed March 16, 1984, Rapid America contends that GSA improperly evaluated the moving expense factor in the solicitation by including inappropriate costs. The protester also alleges that the geographic area restriction in the solicitation was narrowly drawn in order to favor the existing location. Rapid America concludes that the GSA erroneously awarded the lease to other than the low offeror.

We deny the protest on these bases.

The protester first alleges that the reference in the solicitation to a "moving expense" factor, without further details, was improper and contends that GSA actually included undisclosed, inappropriate costs in its evaluation. The allegedly improper, undisclosed costs include the transfer of telephone switching equipment, the value of employee downtime and lost computer time, and the printing of new stationery. The protester argues that the GSA had a responsibility to amend the solicitation to disclose these subfactors. In addition, Rapid America alleges that the evaluation factor of moving costs was only applied against the protester, not against the Lessor, and that moving costs were treated as a major and controlling evaluation factor.

The protester did not ask for a clarification of the moving cost factor in the solicitation before the closing time for the receipt of initial proposals. We have long held that although it is incumbent upon the government to state its material requirements in a clear and unambiguous manner, should any aspect of a solicitation require clarification, the appropriate time for a detailed examination of a provision considered to be ambiguous or confusing is before the time specified for submission of proposals. 50 Comp. Gen. 565 (1971); Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76; Bell & Howell Corp., B-196165, July 20, 1981, 81-2 CPD ¶ 49. To the extent that Rapid America's objection is to the alleged ambiguity of this factor, its protest is untimely under our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(1) (1984).

As for GSA's alleged use of undisclosed or inappropriate evaluation factors, an agency is not obligated to disclose the subfactors of a particular evaluation factor if there is a sufficient correlation between the detailed evaluation factors actually used and the factor listed in the solicitation. 50 Comp. Gen. at 574. In this case, the

subfactors relating to disruption caused by moving--the transfer of telephone equipment, the loss of employee productivity, the loss of computer time, and the necessity to print new stationery--are all reasonably correlated with the moving expense factor.

Further, we have approved solicitations in which moving costs, calculated as an annualized cost, were made a subfactor of rental cost and included in the annual square foot rental rate. T.R.S. Design and Consulting Services, B-214011, May 29, 1984, 84-1 CPD ¶ 578. Paragraph 25 of the GSA solicitation in this case has a similar provision: the annualized cost of items such as moving are to be calculated into the annual square foot rental rate. Here, GSA amortized the total moving expense over the 10-year lease period. As a result, moving costs were only a small part of the rental cost, rather than a major and controlling evaluation factor as the protester alleges.

Rapid America also asserts that moving costs were only assessed against the protester and not against the Lessor. Even if the Lessor's incumbency as a landlord placed Rapid America at a competitive disadvantage, the fact that a firm may enjoy a competitive advantage by reason of incumbency does not provide a basis to sustain a protest absent a showing of unfair action by the government. Francis O. Stebbins & Robert A. Dunaway, B-209460, Mar. 1, 1983, 83-1 CPD ¶ 212.

Accordingly, we find that GSA's inclusion of the complained-of subfactors in the moving expense factor was not unreasonable. See Anthony E. Brown, B-208343, Nov. 10, 1982, 82-2 CPD ¶ 434.

The second issue raised by Rapid America concerns the alleged narrowness of the geographical area in which the offered space could be located. This concerns an alleged impropriety in the solicitation which was apparent before the closing date for the receipt of initial proposals, and as such should have been protested before the closing time. 4 C.F.R. 21.2(b)(1). Since the protest was not filed until after the February 25, 1984 closing date, we will not consider this issue. In any case, since the protester's offer was determined by GSA to be within the delineated geographic area and was given full consideration, the protester was not prejudiced by the alleged impropriety in the solicitation.

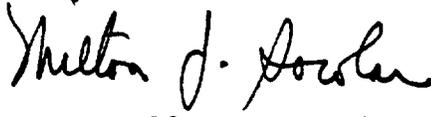
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In addition, the protester raised five new issues in its July 16, 1984 comments on the procuring agency's report under the heading "GSA Manipulation of the Evaluation Process to Favor Landlord." The new issues included the following allegations: the Lessor's initial proposal was not in compliance with the requirements of the original SFO; the imposition of an elevator and front entrance requirement was improper without a solicitation amendment; the application of an "excess energy consumption factor" was improper without a solicitation amendment; the protester's second best and final offer was the lowest compliant offer; and GSA improperly awarded an 11-year lease to the Lessor when the solicitation required a 10-year term. It appears that Rapid America either knew or should have known of these bases of protest as of April 9, 1984, when the record shows that it obtained pertinent procurement documents from GSA's office in Philadelphia.

Newly raised bases of protest must independently satisfy the timeliness requirements of our Bid Protest Procedures. TRS Design and Consulting Services, B-214011, supra, 84-1 CPD ¶ 578 at 4. Because these issues were not raised within 10 working days of when the additional bases for the protest should have been known, they are untimely and we will not consider them on the merits. See 4 C.F.R. § 21.2(b)(2).

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States