



The Comptroller General  
of the United States

Washington, D.C. 20548

C. M. Kelly - PL

## Decision

Matter of: Aero Corporation  
File: B-227026; B-227026.2  
Date: July 24, 1987

### DIGEST

1. Offeror suspended from government contracting at time initial proposals are due is not foreclosed from consideration for award if suspension is lifted before award is made. Once the suspension is lifted, contracting agency has discretion to decide whether to consider offeror's proposal and may do so without making written finding called for by Department of Defense Federal Acquisition Regulation Supplement that compelling reason exists for considering proposal, since requirement for written finding applies only while suspension is in effect, not after it is lifted.
2. Protester fails to show that contracting agency lacked reasonable basis for weaknesses found in evaluation of protester's technical proposal under request for proposals (RFP) for aircraft maintenance services where agency's calculation of protester's aircraft hangar space reasonably showed that protester lacked minimum hangar space called for by RFP; had relatively high labor turnover rate; had experienced delays in delivery under prior contracts; and lacked sprinkler and storage tank separation and diking facilities required by RFP.
3. Protester fails to show that contracting agency should have found unrealistic awardee's price proposal for aircraft maintenance services to the extent that awardee's prices declined over the life of the contract, where awardee's pricing structure was reasonably based on reduction in work hours required as awardee's employees gained experience under the contract.

### DECISION

Aero Corporation protests the award of a contract to Hayes International Corporation under request for proposals (RFP) No. F09603-86-R-0557, issued by the Air Force for programmed

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depot maintenance of C-130 aircraft. In its initial protest, Aero maintains that it was improper for the Air Force to consider Hayes' proposal since Hayes was suspended from government contracting at the time initial proposals were due. In its subsequent protest, Aero contends that the Air Force improperly evaluated various aspects of Aero's technical proposal and improperly evaluated Hayes' proposal for cost realism purposes. We deny the protests.

The RFP, issued on April 29, 1986, called for proposals to perform programmed depot maintenance, including repair and modifications, on the Air Force's C-130 aircraft on a fixed-price basis for a 1-year base period with five 1-year options. Proposals were to be evaluated based on seven technical criteria set out in the RFP, together with price and other "general considerations" such as past performance and proposed contract terms and conditions. Award was to be based on the Air Force's determination of the overall value of each proposal in terms of its potential to best satisfy the Air Force's needs, price and other factors considered.

Initial proposals, due on September 15, were submitted by three offerors, Lockheed Aeromod Center, Inc., Aero, and Hayes, which had been suspended from government contracting on July 2. The Air Force states that due to the suspension, the contracting officer accepted Hayes' proposal but left it unopened; when the suspension later was lifted on September 29, however, Hayes' proposal was included in the evaluation along with the proposals from Lockheed and Aero. Discussions then were held with all three offerors beginning in January 1987, followed by submission of best and final offers on March 6. Award was made on April 3 to Hayes, whose proposal had received the highest technical rating and was the lowest priced.

Aero filed its protest on April 13. The Air Force subsequently allowed Hayes to proceed with performance under the contract notwithstanding the protest based on its finding under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2)(A)(i) (Supp. III 1985), that performance would be in the best interests of the United States.

#### Effect of Hayes' Suspension

With regard to consideration of proposals from suspended contractors, the Department of Defense (DOD) Federal Acquisition Regulation (FAR) Supplement, 48 C.F.R. § 209.405(a)(1) (1985), provides in relevant part:

"Proposals, quotations or offers received from any [contractor on the consolidated list of debarred or suspended contractors] shall

not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception."

Relying on this provision and our recent decision in Hayes International Corp., B-224567, Feb. 4, 1987, 87-1 CPD ¶ 112, aff'd on reconsideration, B-224567.2, Mar. 6, 1987, 87-1 CPD ¶ 256, Aero argues that, because Hayes was suspended at the time initial proposals were due, it was improper for the Air Force to evaluate Hayes' proposal and ultimately make award to Hayes without the written finding called for by the DOD FAR Supplement.<sup>1/</sup> We disagree.

As in this case, the recent Hayes decision on which Aero relies involved Hayes' eligibility for award under an RFP for aircraft maintenance issued by the Air Force. We found that Hayes, whose suspension had taken effect during the evaluation process under the RFP at issue, was not eligible for further consideration for award while the suspension was in effect, since the Air Force had not made a written finding, as required by the DOD FAR Supplement, that a compelling reason existed for considering Hayes' proposal. Contrary to Aero's interpretation, however, Hayes did not establish that a suspended offeror is permanently foreclosed from consideration for award even when its suspension is lifted before award is made; rather, under those circumstances, the contracting agency has the discretion to decide whether to consider the offeror's proposal once its suspension is lifted.<sup>2/</sup> Thus, in Hayes

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<sup>1/</sup> The Air Force maintains that Aero is not an interested party to challenge the award to Hayes because Aero would not be next in line for award if the protest were sustained. The Air Force did not elaborate on this contention and did not point to anything in the evaluation documents supporting its position. Our review of those documents shows only that Hayes was selected as offering the best overall proposal; there is no indication as to how Lockheed and Aero were ranked relative to each other overall. Thus, the Air Force has not shown that Aero was not next in line for award.

<sup>2/</sup> The contracting agency's discretion in this regard applies only to procurements using negotiated procedures, not sealed bidding, since FAR, 48 C.F.R. § 14.404-2(g) (1986), specifically makes the status of a bidder's suspension as of bid opening determinative of the bidder's

we held that it was reasonable for the Air Force not to reinstate Hayes in the competition since its suspension was not lifted until after the evaluation process was nearly completed and shortly before award was made.<sup>3/</sup> Further, the contracting officer need not make the written finding called for by the DOD FAR Supplement that a compelling reason exists before it may consider a proposal from an offeror whose suspension has been lifted, since in our view the written finding is required only while the suspension is in effect.

In this case, Hayes timely submitted its initial proposal by the September 15 due date; after the suspension was lifted 2 weeks later, the contracting officer decided to include the proposal in the technical evaluation. In contrast to Hayes, where the suspension was not lifted until the lengthy evaluation process was completed, the suspension here was lifted shortly after evaluation of the other proposals had begun and before any significant stages of the evaluation were completed. Thus, in this case, unlike the circumstances in Hayes, considering the proposal after the suspension was lifted caused no serious disruption to the Air Force's evaluation process. Accordingly, we see no basis on which to question the reasonableness of the Air Force's decision to include the proposal in the evaluation.

#### Evaluation of Aero's Proposal

The RFP provided that evaluation of technical proposals would be based on the following seven factors, listed in descending order of importance: facilities, quality, management, logistics, production planning, safety, and engineering. The Air Force's technical evaluation in part found that Aero's proposal was deficient under four of the factors: facilities, based on the Air Force's concerns regarding Aero's hangar space capacity; management, based on Aero's "relatively high" labor turnover rate; production planning, based on Aero's delivery problems under prior contracts; and safety, based on Aero's lack of the sprinkler system and storage tank separation and diking facilities called for by the RFP. Aero disputes the Air Force's findings under each of the four factors.

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eligibility for award under an invitation for bids. See Southern Dredging Co., Inc., B-225402, Mar. 4, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 CPD ¶ 245.

<sup>3/</sup> The source selection authority made the award selection on the same day Hayes' suspension was lifted, September 29. Award was made on October 2.

In reviewing challenges to a contracting agency's technical evaluation, we do not conduct an independent evaluation of the proposal's technical merits; rather, we examine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. American Development Corp., B-224842, Jan. 7, 1987, 87-1 CPD ¶ 26. Here, as discussed in detail below, we conclude that Aero has not shown that the Air Force's evaluation of its proposal under the four technical factors at issue lacked a reasonable basis.

(1) Hangar capacity

Section H-567G(3) of the RFP requires the contractor to have "sufficient hangar space to house twelve aircraft to maintain contract flow schedule, plus a minimum of three aircraft in sick bay," or a total of 15 hangar spaces. In addition to the hangar space called for by the RFP, Aero was required to have 12 more hangar spaces to meet its commitment under an existing contract with the Air Force for C-130 aircraft maintenance. Thus, Aero and the Air Force agree, Aero would have to show a total minimum capacity of 27 hangar spaces to satisfy the hangar space requirements in section H-567G(3) of the RFP and its other existing C-130 contract.

Aero contends that its proposal showed that it exceeded the RFP requirement for 27 hangar spaces with a total of 30 spaces, consisting of four "nose docks" or unenclosed hangars; six spaces in two hangars used for washing and painting aircraft; and 20 other hangar spaces, four of which would be added to existing hangars by removing the wings of aircraft being serviced. The Air Force, however, found that Aero had a total of only 16 hangar spaces. In calculating Aero's available hangar spaces, the Air Force (1) excluded the six spaces Aero dedicated to washing and painting aircraft; (2) disregarded the four spaces which Aero said could be added to its existing hangars by removing wings from the aircraft; and (3) found that the four nose docks did not qualify as hangar spaces within the meaning of the RFP. As discussed below, we find that the Air Force reasonably excluded the hangar spaces for washing and painting from its calculation of Aero's available hangar spaces and therefore properly concluded that Aero lacked the minimum hangar capacity required.

The requirements for hangar space are set out in section H-567G of the RFP, entitled "minimum essential requirements," as follows:

"In addition to all other requirements set forth in Appendices A, B, and C and attachments thereto

the following minimum requirements are essential for contract performance:

(1) Enclosed wash rack with capability to maintain wash and rinse water to a temperature of 130 + 10 degrees Fahrenheit (F) which will provide protection to strip and clean aircraft at the rate of one per week in all kinds of weather and which will maintain a temperature range of 50 to 100 degrees F.

(2) Closed hangar for painting aircraft at the rate of two per week. A minimum of 23,874 square feet with a minimum height of 40 feet is required. This area is open hangar area for painting only and does not include administrative or storage space. The paint facility must be environmentally controlled (reference TO 1-1-8 and AFM 86-2).

(3) Sufficient hangar space to house twelve aircraft to maintain contract flow schedule, plus a minimum of three aircraft in sick bay. A minimum of 180,000 square feet is required." (Emphasis added.)

In addition to the three total hangar spaces required by sections H-567G(1) and (2), the parties agree that Aero's existing C-130 maintenance contract requires two hangar spaces for washing and painting, for a total of five hangar spaces for washing and painting. As noted above, Aero's calculation of 30 hangar spaces included six spaces set aside for washing and painting aircraft.<sup>4/</sup> This calculation is based on Aero's view that the 27 total spaces called for by section H-567G(3) and its existing C-130 contract include the five spaces required for washing and painting. In its evaluation, the Air Force subtracted the six Aero spaces set aside for washing and painting from Aero's available hangar space since, in its view, the spaces for washing and painting represent a separate requirement in addition to the 27 total spaces called for by section H-567G(3) and the corresponding provision in Aero's existing C-130 contract. We see no basis to object to the Air Force's treatment of the hangar spaces for washing and painting.

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<sup>4/</sup> The six spaces are in two hangars having three spaces each. Although the RFP and Aero's existing C-130 contract call for only five spaces for washing and painting, Aero recognizes that its additional sixth space cannot be used for other servicing activities because it is located in a hangar used for washing and painting.

Aero argues that since the RFP states that 12 of the 15 hangar spaces called for by section H-567G(3) are to "maintain contract flow schedule," and washing and painting aircraft are included in the contract flow schedule, the spaces devoted to washing and painting are included in, not additional to, the 15 total spaces required under section H-567G(3). In our view, Aero's contention is not based on a reasonable interpretation of section H-567G. The fact that washing and painting aircraft are included in the production schedule specified in the RFP does not establish that the hangar spaces used for those activities are included in the 15 spaces required under section H-567G(3). Rather, we believe that the manner in which the requirements for hangar space are set out in section H-567G demonstrates, as the Air Force maintains, that they are intended to be cumulative, since the space requirements for the three functions--washing, painting, and other servicing--are set out in three separate provisions, with no language establishing a connection among the three or indicating that the requirement in subsection (3) for 15 total spaces includes the five spaces for washing and painting required under subsections (1) and (2).

Accordingly, we find that it was reasonable for the Air Force to subtract the six spaces Aero proposed to use for washing and painting in determining whether Aero had enough available space to meet the 27-space requirement under section H-567G(3) and its existing C-130 contract. Since after subtracting the six spaces for washing and painting from Aero's own calculation of 30 spaces Aero would have at most 24 total hangar spaces, less than the 27 spaces required, the Air Force properly determined that Aero lacked adequate hangar space.

In view of our conclusion regarding the Air Force's treatment of the washing and painting spaces, we need not decide whether the Air Force's other determinations, noted above, regarding Aero's proposed use of nose docks and wing removal also were reasonable.

## (2) Delivery schedule

The Air Force evaluation questioned Aero's ability to meet the performance schedule in the RFP in light of delivery delays under three recent contracts with Aero for C-130 maintenance. Specifically, of 52 aircraft delivered under the three contracts, 30, or 57 percent, were delivered late; under the two most recent contracts in 1986 and 1987, 22 of 28 aircraft were delivered late. According to the Air Force, liquidated damages were assessed against Aero for all the late deliveries, demonstrating that the delay was not due to any action by the Air Force. Aero challenges the

Air Force's evaluation, arguing that many of the aircraft delivered late required "center wing repair," which is more complex and time-consuming repair work than programmed depot maintenance. Further, Aero states that it believes that its delivery record compares favorably to the records of other firms in the industry, including Hayes.

In our view, it was reasonable for the Air Force to rely on Aero's delivery record under prior aircraft maintenance contracts, regardless of the precise type of work performed, as an indication of Aero's ability to meet the delivery schedule under the RFP. In addition, there is no indication in the record and Aero provides no support for its contention that the other offerors have similar delivery records. As a result, we see no basis to object to the Air Force's conclusion that Aero's delivery record showed a weakness in Aero's ability to meet the required delivery schedule.

### (3) Labor turnover rate

The Air Force concluded that Aero's labor turnover rate, particularly among its less experienced personnel, was "relatively high" and reflected a weakness in Aero's proposal. In our view, Aero has not shown that the Air Force's conclusion was unreasonable.

Aero's initial proposal showed a reduction in staff from 1100 employees in 1985 to 850 in September 1986. Most of the separations (320, or 63 percent) involved employees with less than 1 year's tenure. In addition, 27 percent of Aero's current staff had been employed for less than 1 year. During discussions, the Air Force questioned Aero regarding its turnover rate and its current staffing level. Aero replied that its staff had declined to 658 employees as of January 1987, reflecting a reduction in force after the conclusion of two recent contracts. Aero also stated that the percentage of its work force with less than 1 year's tenure had declined from 27 percent to 4.7 percent after the reduction in force.

Given that the percentage of employees with less than 1 year's tenure in Aero's work force dropped from 27 percent to 4.7 percent between September 1986 and January 1987, the reduction in force during that period apparently principally involved less experienced employees. Thus, although the percentage of less experienced employees among Aero's work force--one of the Air Force's concerns--had declined as of January 1987, the Air Force's other concern--that the turnover was concentrated among the less experienced employees--was not resolved. Further, Aero has provided no evidence to show that the Air Force's general assessment

that Aero's labor turnover rate was high was unreasonable. As a result, we see no basis to object to the Air Force's determination that Aero's labor turnover rate constituted a weakness in its proposal.

(4) Sprinkler system and storage tanks

Under the evaluation factor for "safety," the Air Force identified as weaknesses in its proposal Aero's lack of the sprinkler system and storage tank separation and diking facilities required by the RFP. As discussed below, we see no basis to object to the Air Force's conclusions.

The RFP requires that a contractor have a wet sprinkler system for the hangars, storage areas, and other adjacent areas. When its initial proposal was submitted, Aero did not have the required sprinkler system in place. Aero had undertaken to install the sprinkler in connection with its existing C-130 contract, for which it also was required. The original completion date, December 1986, was extended to May 1987; Aero and the Air Force disagree as to the reasons for the delay. In any event, the system ultimately was completed in early June, so that, as Aero states, it would have been in operation for 64 of the 65 months covered by the RFP.

Despite the ultimate installation of the system in June, it is undisputed that during the evaluation and through the date of award under the RFP, Aero did not have the required sprinkler system in place and had experienced delays in its efforts to install the system. Under these circumstances, it clearly was reasonable for the Air Force to conclude that Aero's lack of the required system was a weakness in its proposal.

The RFP also required that the storage tanks for petroleum, oil and lubricants be separated by specified distances and that the ground underneath the tanks be diked to prevent fuel leaks from flowing into other areas. As with the sprinkler system, Aero first addressed this requirement in connection with its existing C-130 contract. Since Aero did not have the required separation and diking facilities in place, the Air Force granted Aero a waiver from the requirement under the existing C-130 contract and allowed Aero until June 1987 to complete construction. In its proposal under the RFP, however, Aero listed December 1987 as the anticipated completion date.

According to the Air Force, Aero's need for a waiver from the requirement until December 1987 would not, standing alone, have been considered a significant weakness in the proposal. Rather, Aero's proposal was found weak in this

area principally because the delays to date in constructing the facilities under its existing C-130 contract cast doubt on Aero's ability to have them in place by the December 1987 anticipated completion date. Aero argues that the Air Force's assessment of Aero's ability to meet the December 1987 completion date was unreasonable because any delay in completing the required facilities by that date would be due solely to requirements imposed by the local environmental regulatory agency, which are beyond Aero's control. We disagree. In our view, regardless of the cause of the anticipated delay, it was reasonable for the Air Force to conclude that Aero had not committed to December 1987 as a firm date for completion of the facilities, and therefore to regard Aero's proposal as weak in that area.

#### Evaluation of Awardee's Price Proposal

The RFP provided that the offerors' price proposals would be evaluated for reasonableness, completeness and realism. Aero challenges the adequacy of the Air Force's evaluation of the awardee's price proposal because, in Aero's view, Hayes' proposal contained unrealistic option year prices for the basic work called for by the RFP. Specifically, Aero regards as unrealistic the decline in Hayes' option year prices for the basic work, given that Hayes' prices for the other line items (fixed-price and negotiated "over and above" work) increase over the option years.

The record shows that the Air Force conducted an extensive analysis of the offerors' price proposals, including auditing the proposed labor rates and advising the offerors during discussions of areas where their proposed work hours differed significantly from the Air Force's estimates. With regard to Hayes' proposal, the decline in its option year prices for the basic work reflected a reduction in the number of work hours required as the employees performing the basic work gained experience over the life of the contract. The Air Force found Hayes' proposed learning curve for its employees reasonable, given that the employees who would be performing the basic work were to be transferred from Hayes' K-135 aircraft maintenance contracts, which Hayes recently had lost, and therefore lacked direct experience in C-130 maintenance work.

We find no basis on which to challenge the Air Force's evaluation of Hayes' price proposal. Hayes' pricing structure, based on the anticipated reduction in work hours over the life of the contract, in our view was reasonable in light of the composition of the labor force Hayes proposed to use. In any event, even if Hayes' prices for the basic work were low, as Aero suggests, there is no indication that they were so low as to reflect a lack of

understanding or technical competence on Hayes' part, particularly given that all three offerors' prices were relatively close, with a difference of only four percent between the highest and lowest prices.

The protests are denied.

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