

EVANS



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: Scheduled Airlines Traffic Offices, Inc.

File: B-248448; B-248448.2

Date: October 1, 1992

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Marc Stec, Esq., Bogle and Gates, for Carlson Travel Network, an interested party.

Ramon Morales, Esq., Maj. Bobby G. Henry, Jr., and Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluation of proposals for travel services improperly failed to weight proposal elements according to their relative dollar values is denied where weights accorded the two factors were consistent with the terms of the solicitation.

2. Protest of technical evaluation of proposal for travel services is denied where record supports agency's conclusions that proposal failed to adequately address certain requirements.

3. Where solicitation provided that technical evaluation factors were more important in award selection than proposed discount/concession fees, agency properly made award to the technically superior offeror even though its fee proposal was slightly less advantageous.

DECISION

Scheduled Airlines Traffic Offices, Inc. (SatoTravel) protests the award of a contract to Carlson Travel Network, Inc. under request for proposals (RFP) No. DAHC22-91-R-0002, issued by the Military Traffic Management Command (MTMC) for travel management services for Department of Defense agencies in the national capital region. SatoTravel alleges that MTMC failed to properly evaluate its technical proposal

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and failed to make a proper cost/technical tradeoff in the award decision.

We deny the protest.

BACKGROUND

The solicitation contemplated award of a no-cost contract under which the compensation to the contractor was limited to commissions and fees paid by the commercial travel industry. The RFP solicited separate technical proposals for both official and unofficial travel; each proposal was to be evaluated based on technical factors and the amount of proposed payments to the government (a discount for official travel and a concession fee for unofficial travel). Award was to be made to the responsible offeror whose proposal was determined to be the most advantageous to the government. The evaluation factors, listed in descending order of importance, were official travel, unofficial travel, and discount/concession fee.

Eight firms submitted initial proposals by the closing date. Following the initial evaluation by the source selection evaluation board (SSEB), four proposals were determined to be in the competitive range. Discussions were then conducted with the remaining offerors, and best and final offers (BAFO) were requested by 4 p.m. on January 17, 1992. SatoTravel submitted a BAFO that included responses to discussion questions, replacement pages for its official travel proposal, and a revised discount/concession fee proposal. A separate package containing its revised unofficial travel proposal, however, was not submitted until after the closing time and therefore was not considered in the BAFO evaluation.

Based on the BAFO evaluation, Carlson was found to be the highest-ranked offeror technically with 84.4 out of 90 points; SatoTravel was second with 81.4 points. The contracting officer then evaluated the offerors' discount and concession fee proposals. While these fee proposals were not point-scored, both Carlson's and SatoTravel's proposed fees were considered acceptable.

In a briefing to the Source Selection Authority (SSA), the Source Selection Advisory Council (SSAC) recommended award to Carlson based on the results of the technical and cost evaluations. The SSA agreed that Carlson's proposal represented the best overall value to the government. In this regard, although SatoTravel had offered slightly higher payments to the government, the SSA found that Carlson's technical superiority outweighed SatoTravel's cost

advantage.¹ Award was made to Carlson on April 15; SatoTravel's protest followed.

SatoTravel contends that the evaluation was flawed and that the award decision therefore was unreasonable. First, SatoTravel alleges that the actual weights the SSEB applied to certain evaluation factors were inconsistent with the weights stated in the RFP. Further, SatoTravel challenges many of the specific proposal deficiencies the SSEB identified in the evaluation. Finally, SatoTravel maintains that the evaluation failed to accord the proper weight to the firm's advantageous discount/concession fee proposal. SatoTravel maintains that, absent these improprieties, its proposal would have been considered the most advantageous to the government.

WEIGHTING OF EVALUATION FACTORS

As noted above, the RFP listed the evaluation factors-- official travel, unofficial travel, and discount/concession fee--in descending order of importance. The RFP did not advise offerors of the weights to be accorded each factor-- 55, 35 and 10 percent, respectively. SatoTravel challenges the agency's application of 55 and 35 percent weights to the official and unofficial travel factors because they do not reflect the relative contract values of the two factors--80 and 20 percent, respectively. SatoTravel asserts that it reasonably expected the official and unofficial travel factors to be weighted accordingly, and that its technical ranking would have been higher had the factors been weighted properly.

We find that the factors were properly weighted in the evaluation. The RFP informed offerors only that the official travel factor was "more important" than the unofficial travel factor. We think actual evaluation weights of 55 and 35 percent are consistent with this evaluation approach. See East, Inc.--Recon., B-235687.3, Mar. 27, 1990, 90-1 CPD ¶ 332 (60 percent weighting of technical factors was consistent with solicitation statements that technical factors were of "paramount importance," and were "significantly" more important than cost). There is no requirement that evaluation factors be given percentage weights in accordance with their actual anticipated dollar values under the contract. Indeed, such

¹The SSA's original decision was based on SATO's initial fee proposal rather than its more advantageous BAFO fee proposal. Upon learning of this error during the protest process, the SSA executed a new source selection decision, essentially confirming his earlier conclusions notwithstanding SATO's improved price.

an approach here might have been inconsistent with the Army's stated goal of promoting unofficial travel services. In this regard, the RFP informed offerors that the Army seeks to increase the amount of unofficial travel under the contract from the current 20 percent of annual contract value by promoting the availability of commercial travel services at the installation. While the RFP acknowledged that official travel services must be given priority, it also emphasized that the contractor would be expected to provide the same quality service for unofficial travelers as those travelers would receive from a full-service commercial travel agency, including, for example, extended hours during busy periods. We conclude that the 55/35 percent weighting of official/unofficial travel was consistent with the RFP provisions.

SatoTravel also asserts that the weights applied to subfactors under both the official and unofficial travel factors were inconsistent with the RFP. In this regard, SatoTravel notes that while the RFP stated that the subfactors were listed in descending order of importance, the SSEB in fact weighted two of the subfactors equally in the evaluation. SatoTravel argues that if the second of the two subfactors had been weighted less than the first, in accordance with the RFP, the difference between SatoTravel's and Carlson's technical scores would have been reduced. SatoTravel concedes, however, that the difference between its technical score and Carlson's for these two subfactors was only about 1 point out of a total of 90; thus, making the second subfactor less important would have had a negligible effect on SatoTravel's position relative to Carlson's. We conclude that SatoTravel was not prejudiced by the relative weighting of the two subfactors.

TECHNICAL EVALUATION

SatoTravel alleges that the SSEB improperly downgraded its proposal in certain areas. In particular, SatoTravel has identified several deficiencies that had a significant impact on its technical score. SatoTravel asserts that, given the closeness of its and Carlson's technical scores, upgrading its proposal in one or more of these areas could change the relative standings.

The evaluation of proposals and the determination of their relative merits is primarily the function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. In reviewing protests against allegedly improper evaluations, therefore, we examine the record only to determine whether the agency's

judgment was reasonable and in accord with the evaluation criteria listed in the RFP. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125. A protester's mere disagreement with an agency's conclusions does not render them unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. As discussed below, the record establishes that the agency's technical evaluation was reasonable and consistent with the stated evaluation criteria.

Requirement for Government Access to Personal Travel Data

The RFP required the contractor to provide a number of computerized reservation system (CRS) terminals to agency personnel for the purpose of monitoring contract compliance and leisure travel activity. The RFP specifically stated that the terminals were to provide the agency access to passenger name records (PNR). In response to this requirement, SatoTravel's proposal stated that most PNR data is confidential information to which the agency does not have a right of access. While SatoTravel acknowledged the agency's need to access information in those records concerning fares, sales figures and concession fee payments, it stated that the technology currently available does not permit a user to view less than all of the information in a PNR. Unwilling to provide agency personnel unlimited access to confidential passenger data, SatoTravel suggested that the agency execute an agreement to indemnify SatoTravel for any damages payable to a traveler resulting from a breach of the traveler's privacy rights. The SSEB noted as a "major deficiency" SatoTravel's refusal to provide government access to PNRs.

SatoTravel contends that the agency unreasonably downgraded its proposed approach. In this regard, SatoTravel points to the RFP provision which states:

"The contractor shall keep the customer's transaction confidential and not disclose any information pertaining to the customer without permission from the COR [contracting officer's representative], except that required by management information reports, including such information as may be needed by the Army to audit or monitor services rendered, prices charged, concession fees paid, etc."

SatoTravel argues that this provision requires the contractor to protect personal passenger information (such as names, passport and visa information, and credit card numbers) from government access, since the government does not need such personal information to monitor services rendered, prices charged, or fees paid under the contract. SatoTravel essentially concludes that, since it can only provide access to PNR information on an all-or-none basis,

in order to comply with the confidentiality requirement it must not provide the government any access at all.

SatoTravel's argument amounts to a challenge to the PNR access requirement, and as such is untimely. The RFP clearly required the contractor to furnish the government with CRS terminals so that government personnel can access PNRs. To the extent that SatoTravel believes the confidentiality requirement is inconsistent with the requirement to provide the government with access to PNRs, this inconsistency amounts to an alleged solicitation impropriety which SatoTravel should have protested prior to the time set for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1992); ABB Lummus Crest Inc., B-244440, Sept. 16, 1991, 91-2 CPD ¶ 252. Since SatoTravel did not challenge the requirement for government access to PNRs, it cannot now argue that the government is not entitled to access, nor can it complain that its proposal was improperly downgraded for failure to comply with the access requirement.

In any case, SatoTravel's challenge to this aspect of the evaluation is without merit. The RFP lists the information the PNR must contain; the list does not include any of the information SatoTravel says it wishes to keep confidential, such as credit card numbers or passport/visa information. Thus, there is no factual basis for SatoTravel's assertion that its proposal was downgraded for failure to provide government access to such confidential information. While SatoTravel apparently intended to include such personal data as credit card numbers in its PNRs, the RFP did not require it. The fact that SatoTravel is unable, due to technological constraints, to limit the information accessible to government personnel to that which the government actually requires does not excuse it from complying with the PNR access requirement altogether. We conclude that the agency reasonably downgraded SatoTravel's proposal for failure to comply with the requirement.

Subcontracting Plan

In accordance with Federal Acquisition Regulation (FAR) §§ 19.708(b) and 52.219-9, the RFP required offerors to submit a plan for subcontracting work to small business and small disadvantaged business (SDB) concerns. As the Department of Defense has established a goal of subcontracting 5 percent of work (measured in terms of total contract value) to SDB concerns, the RFP advised offerors that proposals offering to subcontract more than 5 percent of the work to SDBs could earn increased scores, while proposals offering to subcontract less than 5 percent to SDBs could be downgraded. Amendment No. 5 to the RFP provided a standard format for the subcontracting plan.

SatoTravel submitted a plan in the required format that offered to comply with the 5 percent requirement. However, the Army downgraded the plan for several reasons. First, the Army found the plan lacking in detail as to the firm's proposed approach, and therefore was unable to determine the extent of SatoTravel's commitment to subcontracting. Specifically, the Army found that SatoTravel did not address controls over subcontractors, communications with subcontractors, and subcontractor training. In addition, the Army questioned SatoTravel's failure to identify potential small business and SDB subcontractors, and its plan to wait until after award to identify and solicit subcontractors. Second, SatoTravel based its subcontracting goal on the projected contract volume initially provided in the RFP (\$40,189,245) instead of on the increased projection in RFP amendment No. 6 (\$42,635,342), and failed to submit sales volume amounts proposed to be subcontracted for each subcontract site, despite being asked to do so during discussions. As a result, the Army was uncertain whether SatoTravel would in fact subcontract at least 5 percent of its business to SDBs.

SatoTravel asserts that the Army improperly downgraded its subcontracting plan in both its official and unofficial travel proposals. As an initial matter, SatoTravel notes that the subcontracting plan in its initial official and unofficial proposals addressed all of the areas in which the Army ultimately found detail to be lacking. However, amendment No. 5 to the solicitation set forth a required format for the plan; SatoTravel therefore replaced the original plan in its official proposal with a new plan that followed the specified format. (SatoTravel also revised the subcontracting plan in its unofficial proposal but, as noted above, failed to submit the revised proposal by the deadline.) Since the format did not specifically request offerors to discuss subcontractor controls, communications, or training, SatoTravel explains, it did not include these areas in its new subcontracting plan. SatoTravel maintains that the agency should not have downgraded the plan since it followed the required format.

We find that the agency properly downgraded SatoTravel's official travel subcontracting plan for failure to discuss specific aspects of its proposed approach. While the subcontracting plan format in amendment No. 5 did not expressly provide for discussion of subcontractor controls, communications, or training, section M of the RFP required that those areas be addressed in order for the proposal to be considered acceptable. As amendment No. 5 did not change the evaluation criteria in this regard, and SatoTravel's BAFO subcontracting plan deleted discussion of those areas, the agency properly downgraded the plan.

We also find reasonable the agency's other conclusions regarding SatoTravel's subcontracting plan, both in the official and unofficial travel categories. First, we think the agency reasonably concluded that SatoTravel's plan was vague because it proposed to wait until after contract performance was underway to identify potential subcontractors and sites to be subcontracted. While SatoTravel argues that its plan is desirable because it ensures a smooth transition before subcontractors are brought on board, this constitutes mere disagreement with the agency's conclusion; it does not provide a basis to challenge the evaluation. More importantly, SatoTravel's failure to identify precisely how, when and where it would use subcontractors prevented it from calculating the requested subcontract sales volume figures; the plan thus failed to provide the agency with the necessary assurance of SatoTravel's commitment to SDB subcontracting. SatoTravel's failure to utilize the RFP's most recent sales volume figures in its subcontracting plan reinforced the agency's conclusion.²

Leisure Travel Reports

The RFP contained a requirement to provide special reports on leisure travel trends at the agency's request. During discussions, the agency informed SatoTravel that it had not demonstrated its ability to provide these reports. SatoTravel responded to the deficiency in its BAFO by assuring the agency of its commitment to provide any necessary reports. SatoTravel added that its reporting department has a report generator software package with enormous capability, and listed several report titles. SatoTravel asserts that the Army apparently downgraded the proposal in this area for failure to provide sample reports, even though the RFP did not require them.

We find the evaluation reasonable. While SatoTravel correctly notes that the RFP did not require production of sample leisure travel reports, this position ignores the fact that the agency provided SatoTravel with adequate notice through discussions that the firm needed to furnish additional evidence of its ability to produce the reports. SatoTravel's reassertion that it could provide the reports, without supporting documentation, apparently did not demonstrate to the Army the firm's ability to provide the reports. We find nothing unreasonable in the Army's

²SatoTravel asserts that it used the obsolete sales volume figure, instead of the figure set forth in amendment No. 6, because amendment No. 6 did not revise the subcontracting plan format to include the new figure. Our review of amendment No. 6, however, shows that the subcontracting plan format does contain the revised sales figure.

conclusion that a list of report titles by itself does not demonstrate an offeror's ability to furnish reports that will be useful to the agency.

Provision of CRS Manuals to the Government

The RFP requires that the contractor provide copies of CRS manuals to "the user" of the CRS system. SatoTravel interpreted the term "user" to mean its own personnel, and stated in its proposal that all personnel under the contract would be furnished with a copy of the manual. The Army downgraded the proposal because it did not offer to provide manuals for the government. In challenging the evaluation in this area, SatoTravel asserts that its reading of the RFP--that is, that the term "users" refers to travel agency personnel and not government personnel--was reasonable, and that it thus was not required to offer manuals to government personnel. We find SatoTravel's argument untenable. As noted above, the RFP clearly required the contractor to furnish a number of CRS terminals to the government for monitoring purposes. We think it should have been obvious that the users of these terminals would require manuals in order to use them properly. We conclude that the Army properly downgraded SatoTravel's proposal for failure to offer manuals to the government.

Other Factors

The SSEB found SatoTravel's proposal deficient in several other respects, primarily in the unofficial travel area. For example, the SSEB downgraded SatoTravel's unofficial travel proposal under the hardware and software capabilities factor because it failed to adequately discuss methods of tracking different types of sales. While SatoTravel asserts that its proposal in this area was virtually identical to its official travel proposal, which earned a high rating under this factor, the record shows that it was the firm's revised official travel proposal that earned the high rating; as noted, SatoTravel did not timely submit a revised proposal for unofficial travel. The SSEB also noted that SatoTravel's proposal failed to offer same-day delivery of tickets to unstaffed sites and limited the form of payment at those locations to credit cards because of accountability concerns. While SatoTravel correctly points out that the RFP did not require same-day ticket delivery or acceptance of all forms of payment at unstaffed sites, we find it reasonable of the agency to prefer Carlson's proposal, and accord it a higher rating, for offering to provide those services. Finally, the SSEB downgraded SatoTravel's unofficial travel proposal because it did not adequately explain how its automated "queuing" system would handle fluctuations in workload. Our review of SatoTravel's proposal and response to a discussion question on this issue

confirms that SatoTravel did not explain how the queuing system works; we therefore find the Army's conclusion reasonable.

COST/TECHNICAL TRADEOFF

SatoTravel asserts that when the alleged evaluation errors are corrected, its proposal and Carlson's become technically equal; SatoTravel's more favorable discount/concession fee proposal [deleted] should then have become the basis for award. Since we have found SatoTravel's allegations regarding the technical evaluation to be without merit, we have no basis to find that the firm's fee proposal should have become the controlling award factor. As the record supports the SSA's conclusion that Carlson submitted the technically superior offer, and technical factors were far more important in the evaluation than proposed discount/concession fees, we conclude that the agency reasonably selected Carlson for award based on its technically superior proposal.³ See Scheduled Airlines Traffic Offices, Inc., B-229883, Mar. 29, 1988, 88-1 CPD ¶ 317.

The protest is denied.

James F. Hinchman
General Counsel

³In support of its decision to make award to Carlson notwithstanding SatoTravel's more favorable fee proposal, the Army incorrectly asserts that "discounts and concession fees in no-cost acquisitions such as this do not have the legal significance of cost or price in making an award selection in a negotiated procurement." In support of this proposition, the Army cites our decision in Moorman's Travel Serv., Inc.--Recon., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643. In fact, proposed discount and concession fees in no-cost procurements have the legal significance conferred upon them by the RFP. Thus, where, as here, the fees are designated as an evaluation factor, they may have the same (or even greater) significance as cost and price have in other procurements. In the Moorman's case, the proposed fee was without legal significance only because it was not a weighted evaluation factor under the terms of the solicitation.