



Comptroller General  
of the United States  
Washington, D.C. 20548

A2283

# Decision

**Matter of:** Serv-Air, Inc.  
**File:** B-258243.4  
**Date:** March 3, 1995

Richard O. Duvall, Esq., Richard L. Moorhouse, Esq., and Dorn C. McGrath III, Esq., Holland & Knight, for the protester.  
Thomas J. Madden, Esq., James F. Worrall, Esq., and Jerome S. Gabig, Esq., Venable, Baetjer, Howard & Civilatti, for Beech Aerospace Services, Inc.; and Laura K. Kennedy, Esq., Kevin P. Connelly, Esq., and G. Matthew Koehl, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Kay and Associates, the interested parties.  
William P. McGinnies, Esq., Department of the Treasury, for the agency.  
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

The General Accounting Office (GAO) will not object to corrective action taken by the agency in response to a GAO decision sustaining a protest and recommending the reopening of discussions where the agency restricts the scope of revisions that offerors may make to their proposals in response to the discussions; such action will remedy the procurement impropriety upon which the prior protest was sustained; and will do so without raising the possibility of technical leveling or unduly delaying the source selection process.

## DECISION

Serv-Air, Inc. protests the determination of the United States Customs Service, under request for proposals (RFP) No. CS-94-004, issued to obtain aircraft maintenance services, to limit discussions and proposal revisions to the offerors' cost proposals. The protester contends also that the agency's requirements have been reduced and that it should amend the RFP to reflect those requirements.

We deny the protest.

The RFP sought proposals to provide maintenance under a cost-plus-award-fee contract of aircraft used to detect and apprehend aircraft, marine, and land vehicles attempting to smuggle contraband into the United States. Four proposals, including those from the protester, Kay and Associates, and Beech Aerospace, Inc., were included in the competitive range. The contract was awarded to Beech on August 12, 1994. Kay and Serv-Air each protested the selection on numerous grounds. Serv-Air challenged, among other things, the agency's evaluation of its cost and technical proposal.

In our decision, Serv-Air, Inc.; Kay and Assocs., Inc., B-258243 et al., Dec. 28, 1994, 95-1 CPD ¶ \_\_\_\_, we sustained Kay's protest based on our conclusion that the agency improperly failed to conduct discussions with Kay concerning its willingness to cap its general and administrative (G&A) costs. In the same decision, we denied Serv-Air's protest in part and dismissed it in part. We recommended that the agency reopen discussions with Kay in order to ascertain the appropriate G&A rates to be used in determining the G&A costs which would be incurred if the agency accepted Kay's proposal. We also stated that the agency should conduct discussions with all other competitive range offerors and request new best and final offers (BAFO).

In response to our decision and recommendation, Customs provided the competitive range offerors an opportunity to submit new cost BAFOs. The request stated that "no revisions to your technical proposal shall be accepted, considered, or evaluated."

Serv-Air protests that the agency's decision to restrict proposal revisions to the cost area is improper. The protester argues that because the agency has reopened discussions, it must permit offerors to revise any aspect of their proposals they desire. Serv-Air complains that the BAFO request "pays little more than lip service" to the recommendation contained in our decision. The protester states that the BAFO request is "arbitrary, unreasonable and inimical to the remedy afforded by [the General Accounting Office's (GAO)] . . . decision to correct the procurement deficiencies found after [GAO's] full review of the administrative record."

Generally, offerors in response to discussions may revise any aspect of their proposals they see fit--including portions of their proposals which were not the subject of discussions. American Nuclearonics Corp., B-193546, Mar. 22, 1979, 79-1 CPD ¶ 197. Where the discussions are held in order to implement a recommendation of our Office for corrective action, however, discussions and proposal revisions may be limited. See System Planning Corp., B-244697.4, June 15, 1992, 92-1 CPD ¶ 516. In this regard,

the details of implementing our recommendations for corrective action are within the sound discretion and judgment of the contracting agency. OMNI Int'l Distribs., Inc., 67 Comp. Gen. 123 (1987), 87-2 CPD ¶ 563. Moreover, we will not question the agency's ultimate manner of compliance so long as it remedies the procurement impropriety that was the basis for the decision's recommendation. See Furuno U.S.A., Inc.--Recon., B-221814.2, June 10, 1986, 86-1 CPD ¶ 540.

Under the circumstances here, we believe it appropriate for the agency to limit the offerors' submissions to cost proposals. Our prior decision found nothing improper in the agency's evaluation of any of the technical proposals and found no merit to any of Serv-Air's numerous allegations concerning the evaluation of its own or the awardee's proposal. We sustained Kay's protest on the basis of one issue relating to its cost proposal which had no bearing on the technical evaluation or the agency's assessment of the relative merits of the technical proposals. The corrective action taken by the agency will provide it with the cost information necessary to reasonably evaluate the estimated costs associated with accepting either Kay's or any of the other offerors' proposals. In short, it will remedy the procurement impropriety found in our prior decision. In addition, as the agency states, restricting the scope of the new BAFOs will eliminate any concerns about the possibility of technical leveling and reduce further costly delay caused by the protest process. We therefore find that the agency acted within its discretion in limiting discussions.

Serv-Air, the incumbent contractor, also complains that the agency has reduced its requirements under the incumbent contract below the level advised by RFP amendment No. 7, which reduced the estimated flight hours by approximately 25 percent. Serv-Air states, and the agency concedes, that the agency directed service reductions of approximately 32 percent in January 1995. The protester essentially speculates that this level is a more accurate reflection of anticipated requirements than was stated in the amended RFP. Serv-Air argues that the agency should revise its RFP flight hour estimates and provide Serv-Air and the other offerors

---

<sup>1</sup>Technical leveling refers to:

"helping an offeror bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from an offeror's lack of diligence, competence, or inventiveness in preparing the proposal." Federal Acquisition Regulation § 15.610(d).

an opportunity to revise their proposals in light of these changed requirements.

Customs has provided a sworn statement from the Chief of the Aviation Maintenance Branch rebutting the protester's position and confirming the accuracy of the requirements stated in amendment No. 7. This individual states that the flight hour estimates have not changed, that the current reduction is not indicative of the agency's overall maintenance needs, and that the number of flight hours could easily increase in the near future depending on mission requirements and the number of aircraft in operation. Based on the evidence submitted by the agency, we find that the RFP reasonably reflects Customs's overall needs for aircraft maintenance services and we conclude that there is no reason to reopen the competition.

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel