

# DECISION



11291 *Proct*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-194717

DATE: September 4, 1979

MATTER OF: Serv-Air, Inc. *DLG 00354*

*[Protest of Agency Refusal to Extend Proposal Due Date]*  
DIGEST:

1. Protest against contracting officer's denial of request to extend proposal due date and adequacy of evaluation factors, filed prior to closing date for receipt of initial proposals, is timely under section 20.2(b)(1) of GAO's Bid Protest Procedures and will be considered on merits.
2. Determination of date for receipt of initial proposals is for contracting agency and GAO will not substitute its judgment therefor unless such determination is shown to be arbitrary or capricious.
3. Offerors in negotiated procurement must be informed of evaluation factors and their relative weights.

(Serv-Air, Inc. (Serv-Air), protests the award of a contract by the Department of the Army, Fort Rucker, Alabama, under request for proposals (RFP) No. DABT01-79-R-0036 for the fiscal year 1980 aircraft maintenance requirement for the Army's Aviation Center, Aircraft Development Test Activity, and other satellite activities. Serv-Air, which did not submit a proposal, contends that the solicitation did not allow sufficient time to permit offerors to adequately prepare and submit their proposals; *the protester* asserts that the proposal due date favored the incumbent and that a time extension therefore would "make for more and better competition." Serv-Air also argues that the evaluation factors for award were defective. For the reasons set forth below, the protest is denied. *AGC 00690*

*006430*

Background

( A presolicitation letter was mailed to 42 companies on February 28, 1979, and the requirement was synopsisized in the Commerce Business Daily (CBD) on March 7. The RFP was distributed to 24 interested companies on March 22 with the proposal due date set for May 1. A pre-proposal conference was held on April 9, and on April 10 Amendment 0001 to the RFP was issued setting forth 11 pages of questions raised at the conference and their answers.

The amendment also notified all firms that the deadline for submission of additional questions was April 16. On April 18, Serv-Air requested a 30-day time extension for submission of offers. The grounds for this request were that a complex procurement was involved; more time would allow more competition; and the established schedule favored the incumbent. The request, received by the contracting officer on April 20, was denied on April 23. On April 25, the contracting officer received a telegram from Serv-Air which asserted that the evaluation factors were not sufficiently detailed or specific to allow it to estimate the "application of such factors on their proposal in relationship to other possible proposals." Serv-Air sought to "rectify" the situation through a series of 19 questions, and requested a response to the questions "at least three working days" prior to the proposal due date. In this connection, paragraph 3 of the RFP's Solicitation Instructions and Conditions advised prospective offerors that:

"Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation . . . must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers."

Timeliness

The Army initially suggests that the protest is untimely under section 20.2(b)(2) of our Bid Protest

Procedures, 4 C.F.R. part 20 (1978) (Procedures), because Serv-Air was aware of the grounds for protest when it received the RFP (on or about March 26), but failed to protest within 10 working days thereafter. In this connection, the cited section requires that bid protests involving matters other than those to which section 20.2(b)(1) applies be filed "not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

However, both the issues of sufficient time to prepare a proposal and adequacy of evaluation factors involve allegations of improprieties in the solicitation apparent prior to the date for receipt of initial proposals, and as such the timeliness provision at section 20.2(b)(1) of our Procedures, which requires that such protests be filed by that date, applies. Dynatrend, Incorporated, B-190886, March 16, 1978, 78-1 CPD 213; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. Since Serv-Air's protest was filed in our Office on April 27, and initial proposals were due on May 1, the protest is timely and will be considered on the merits.

#### Denial of time extension

We have held that the determination of a date for receipt of proposals is a matter of judgment properly vested in the contracting officer and we will not substitute our judgment unless it appears that the agency's determination was arbitrary or capricious. National Small Business Association, B-184052, September 26, 1975, 75-2 CPD 196; 50 Comp. Gen. 565, 571. Our concern is whether the contracting officer's action in that respect unduly restricted competition. Solar Resources, Inc., B-193264, February 9, 1979, 79-1 CPD 95. In this connection, Defense Acquisition Regulation (DAR) § 1-300.1 (1976 ed.) requires that all procurements "be made on a competitive basis to the maximum practicable extent."

(The contracting officer based his denial of the time extension request on the following considerations: his belief that there was "adequate notice" of the procurement to the private industry (the February 28 presolicitation letter and the March 7 CBD synopsis); a total of 40 days was allotted between issuance of the RFP and the date for receipt of proposals, as opposed to only 36 days in the 1977 solicitation for this same service and under which four offers were received; the necessity to maintain the established procurement schedule, i.e., proposal evaluation, negotiation, best and final offer, etc.; and the fact that Serv-Air was afforded several opportunities before April 20 to raise the concerns that formed the basis for its request, but it was not until only 7 working days before the scheduled proposal due date of May 1 that the request was actually made.)

(We do not believe that the reasons proffered by Serv-Air for its request warrant a finding that the contracting officer's denial was improper. First, the record indicates that a number of proposals in fact were submitted in response to the RFP and all were found to be in the competitive range. This, as well as the fact that in the 1977 solicitation only 36 days were available, in effect rebuts Serv-Air's argument that the complexity of the procurement necessitated more than 40 days to prepare a proposal.)

With respect to the above, and specifically regarding the second stated reason for the request, the Army's report on the protest suggests that "adequate" competition therefore was achieved, a position that Serv-Air contends conflicts with the requirement at DAR § 1-300.1. However, we have stated that whether or not a particular procurement unduly restricts competition properly may include consideration of whether adequate competition was obtained. 50 Comp. Gen. 565 (1971). Further, we have recognized that the cited regulation does not require that a proposal due date be extended merely to increase the opportunity for competition by accommodating a firm that has indicated interest in submitting an offer. Dyneteria, Inc., B-181589, October 29, 1974, 74-2 CPD 230; Singer Business Machines, B-180279, July 3, 1974, 74-2 CPD 4; 50 Comp. Gen., supra.

In addition, we have often noted that certain firms may enjoy a competitive advantage by virtue of their incumbency or their own particular circumstances. See Patrician, B-194011, July 3, 1979, 79-2 CPD 3, and cases cited therein. However, the test to be applied is whether the competitive advantage enjoyed by a particular firm would be the result of a preference or unfair action by the Government. Price Waterhouse & Co., B-186779, November 15, 1976, 76-2 CPD 412.

In view of the above considerations, we cannot say that under the present circumstances the denial of Serv-Air's request for additional time to prepare its proposal was arbitrary or capricious.

#### The evaluation factors

Paragraph 2 of Section D of the RFP provided:

##### "EVALUATION CRITERIA

"The following criteria will be applied in the evaluation in determining the degree of acceptability of each proposal in offering to satisfy the requirements of the Government as set forth in this solicitation. The two major criteria of Technical and Cost are equal in importance in that technical acceptability and cost realism must both be determined to exist in each proposal to be considered for award.

"Within the Technical criteria the following factors will be addressed. The first three are approximately equal in importance. The fourth is less important than any of the first three but is more important than the fifth. The sub-factors under each are not ranked."

The paragraph then listed five technical factors including 34 sub-factors, and four cost factors.

(Serv-Air argues that the evaluation criteria are defective in a number of respects.) Citing our decision in 36 Comp. Gen. 380, 385 (1956), Serv-Air contends that the criteria are not "specific enough to allow the prospective offerors to estimate, within reasonable limits, the effect of the application of those factors on their proposals in relation to other possible proposals." Serv-Air also contends that the criteria do not meet the requirement reflected in the following language in 49 Comp. Gen. 229, 230 (1969):

" \* \* \* [offerors should be informed] of the actual evaluation factors used \* \* \* [and] of the relative weights attached to each factor. \* \* \* Whether or not numerical ratings are to be used, we believe that notice should be given as to any minimum standards which will be required as to any particular element of evaluation, as well as reasonably definite information as to the degree of importance to be accorded to particular factors in relation to each other. \* \* \*"

Serv-Air requests that we require the Army to answer a number of questions regarding the stated method of evaluation, which the protester contends illustrate the defects in the criteria.

Initially, we note that 36 Comp. Gen., supra, concerns a formally advertised procurement, not a negotiated one as here. Nevertheless, we apply a similar principle in negotiated procurements as that proposed by Serv-Air in citing the case. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175.

Thus, it has been the consistent position of our Office, reflected in 49 Comp. Gen., supra, that sound procurement policy dictates that offerors should be informed of the broad scheme of scoring to be used by the evaluating officials and the relative importance to be attached to each such evaluation factor so that offerors may submit accurate and realistic proposals and compete on an equal basis. Shappell Government

Housing, Inc. and Goldrich and Kest, Inc., 55 Comp. Gen. 839, 851 (1976), 76-1 CPD 161, and cases cited therein.

Thus, procuring agencies are not bound to any particular manner of presentation, provided the factors and their relative weights are disclosed so as to insure equal and intelligent competition. See BDM Services Co., B-180245, May 9, 1974, 74-1 CPD 237; 50 Comp. Gen. 565, (1971); DAR § 3-501(b)(3)D(i). In this respect, in 49 Comp. Gen., supra, we found that the evaluation factors involved were stated in such broad and general terms that they gave no indication that the contracting agency intended to apply detailed and rigid requirements, including weighted scoring, in evaluating offers; on that basis we found that they were not sufficiently informative and we set forth specific guidelines of how the evaluation factors should be presented.

( We believe that the evaluation information provided in the RFP satisfies those disclosure requirements.


We first point out that in our view (the disclosure in section D of the RFP of five technical factors, a total of 34 technical subfactors, and four cost factors is sufficient to provide offerors a basis upon which to submit a properly focused proposal.) See 51 Comp. Gen. 129, 133 (1971). In this connection, there is no indication in the record, other than Serv-Air's mere speculation, that the Army has failed to disclose any factors or other standards for evaluation that would affect the preparation of a realistic proposal. See AEL Service Corporation, et al., 53 Comp. Gen. 800, 805 (1974), 74-1 CPD 217.

With respect to the disclosure of the relative weights of the evaluation criteria, RFP Section D as quoted above advises offerors at the outset that "Technical and Cost are equal in importance in that technical acceptability and cost realism must both be determined to exist \* \* \* ." While this may be an inartful statement of the relative weights of these

major evaluation factors, in our view (it is sufficient to convey to offerors the Army's intention that technical acceptability and cost realism (as opposed to proposed cost, see Analysis & Computer Systems, Inc., 57 Comp. Gen. 239, 244 (1978), 78-1 CPD 75) are to be afforded equal consideration in proposal evaluation.) Cf. Chauncey Bell and Associates, Inc., B-192015, October 6, 1978, 78-2 CPD 257. Regarding the RFP's method of advising offerors of the relative importance of the five technical factors listed, (we have recognized as appropriate the simple listing of evaluation factors in descending order of importance or priority.) See Shappell Government Housing, Inc. and Goldrich and Kest, Inc., supra; 50 Comp. Gen. 788 (1971); 50 Comp. Gen. 390 (1970). Clearly, the narrative in the present case is more informative than such listing, and we thus view it as sufficiently definite as to the degree of importance of each factor. See BDM Services Company, supra. Finally, (there is no requirement that the relative weights of subfactors, such as the 34 listed here, be disclosed.) North American Telephone Association, B-187239, December 15, 1976, 76-2 CPD 495, and cases cited therein. In this connection, we have stated that where a solicitation is silent on that point offerors may assume that the subfactors are to be evaluated equally.) Informatics, Inc., B-194734, August 22, 1979, 79-2 CPD .

In view of the above, we believe that the subject evaluation factors were properly set out by the Army in the RFP. It therefore is not necessary to pursue the answers to the questions submitted by Serv-Air in support of its position on this issue.

The protest is denied.

  
Deputy Comptroller General  
of the United States