



## Decision

**Matter of:** AeroSage, LLC

**File:** B-416381.4

**Date:** December 21, 2018

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David M. Snyder, for the protester.  
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Defense Logistics Agency, for the agency.  
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participated in the preparation of the decision.

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### DIGEST

Protest that agency failed to provide sufficient time for offerors to submit proposals is denied where the timeframe allotted was reasonable.

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### DECISION

AeroSage LLC, of Tampa, Florida, a service-disabled veteran-owned small business (SDVOSB), protests the terms of request for proposals (RFP) No. SPE605-18-R-0218, issued by the Defense Logistics Agency (DLA) for delivery of fuel products to locations throughout New England. The protester argues that it was not provided with enough time to respond to the solicitation as amended.

We deny the protest.

### BACKGROUND

DLA issued the RFP on May 1, 2018, in accordance with the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) part 12 and the simplified acquisition procedures of FAR part 13. Agency Report (AR), Tab 1, RFP at 1, 3. The solicitation seeks proposals for the delivery of fuel to locations in Connecticut, Rhode Island, Vermont, Maine, and Massachusetts. Id. at 5-6. The RFP includes 10 separate contract line item numbers (CLINs), each for the delivery of fuel to a specific location. Id.

On May 15, prior to the time set for receipt of proposals, AeroSage filed a protest challenging the terms of the solicitation. Protest (B-416481) at 1-5. In that protest,

AeroSage argued that DLA: improperly bundled requirements; failed to set aside the solicitation for small business concerns; included overly restrictive solicitation terms; provided inaccurate estimates for the amount of fuel to be acquired; and did not allow enough time for offerors to respond to the solicitation. AeroSage, LLC, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 2. On August 23, our Office issued a decision dismissing in part, denying in part, and sustaining in part, the protest. Id. at 1-13. In that decision we sustained the allegation challenging DLA's decision not to set aside certain line items for small businesses where our review of the record confirmed that DLA failed to take into consideration that two of the ten CLINs (identified as CLINs 0004 and 0009) were valued between \$3,500 and \$150,000.<sup>1</sup> Id. at 8-9. Our decision recommended that DLA determine whether CLINs 0004 and 0009 should be set aside for small businesses and that any future acquisition of those two CLINs be conducted accordingly. Id. at 13. All of AeroSage's remaining protest allegations were either dismissed or denied. Id. at 1-13.

On August 29, DLA reopened the solicitation for CLINs 0004 and 0009 to set them aside for small businesses, and established September 12 as the new closing date for the submission of offers. AR, Tab 9, RFP amend. 5, at 1-2. No other changes were made to the RFP. Id. On August 30, the agency awarded contracts for CLINs 0001, 0002, 0003, 0006, 0007, and 0010.<sup>2</sup> Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4. AeroSage was not selected as an awardee under any of the awarded CLINs. Id.

On September 4, AeroSage filed a protest challenging the agency's award decisions.<sup>3</sup> Protest (B-416381.3). In the September 4 protest, AeroSage argued that the agency should have provided AeroSage with an opportunity to revise its prices prior to making

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<sup>1</sup> Acquisitions of supplies or services with an anticipated dollar value exceeding \$3,500, but not over \$150,000, are automatically reserved exclusively for small business concerns unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. FAR § 19.502-2(a). The provisions of section 19.202-2 of the FAR generally require contracting officers, before issuing solicitations, to make "every reasonable effort to find additional small business concerns" and to maximize small business participation. FAR § 19.502-2(b); AeroSage, LLC, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 8.

<sup>2</sup> The RFP contemplated that awards would be made "on a line-by-line basis." RFP at 3.

<sup>3</sup> On September 4, the same day that AeroSage filed its protest challenging DLA's award decisions, AeroSage also filed a request for reconsideration of our August 23 decision. AeroSage Request for Reconsideration (B-416381.2) at 1-2. That request for reconsideration was subsequently dismissed because it failed to state a valid basis for reconsideration. AeroSage, LLC--Recon., B-416381.2, B-416381.5, Dec. 6, 2018 (unpublished decision) at 1.

any awards.<sup>4</sup> Id. at 2. AeroSage also raised the same pre-award solicitation challenges it argued in its initial May 15 protest. Compare Protest (B-416381) at 1-5, with Protest (B-416381.3) at 1-5. Our Office dismissed the September 4 (B-416381.3) protest after finding: (1) AeroSage's first contention, that it should have been provided with an opportunity to revise its prices--failed to establish a valid basis for challenging the agency's action; and (2) that the remaining protest allegations amounted to a request for reconsideration of our prior decision by re-raising issues already addressed in our August 23 (B-416381) decision.<sup>5</sup> See AeroSage, LLC, B-416381.3, Oct. 1, 2018 (unpublished decision) at 2-4.

On September 12, DLA extended the due date for the submission of offers on CLINs 0004 and 0009 to September 17. AR, Tab 12, RFP amend. 6, at 4. No other changes were made to the terms of the solicitation. Id. at 4. AeroSage filed this protest on September 17, prior to the submission deadline time. Protest (B-416381.4).

## DISCUSSION

AeroSage contends that the agency did not provide an adequate amount of time to allow offerors to submit proposals in response to CLINs 0004 and 0009.<sup>6</sup> Id. In this regard, AeroSage argues DLA was required to provide offerors with at least 30 days to respond to the RFP and that AeroSage needed more time to obtain the information

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<sup>4</sup> Specifically, AeroSage asserted that “[t]he award notification was made without opportunity for small businesses like the protesters to get initial best pricing or updated best pricing.” Protest (B-416381.3) at 2.

<sup>5</sup> Our decision dismissing AeroSage's September 4 protest was issued on October 1, 2018. AeroSage, LLC, B-416381.3, Oct. 1, 2018 (unpublished decision) at 1. On October 3, 2018, AeroSage requested reconsideration of that October 1 decision. AeroSage Request for Reconsideration (B-416381.5) at 1-4. That request for reconsideration was dismissed on December 6. AeroSage, LLC--Recon., supra.

<sup>6</sup> The protester also asserts that the RFP improperly uses “0DPRVDURG – OPIS PROVIDENCE UNL RFG ETHANOL 10%” as a price adjustment reference for CLIN 0009. Protest (B-416381.4) at 2. This allegation is dismissed because our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Here, the RFP identified “0DPRVDURG – OPIS PROVIDENCE UNL RFG ETHANOL 10%” as the price adjustment reference for CLIN 0009 when the solicitation was first issued. RFP at 12. Nothing in subsequent amendments that were issued after AeroSage's May 15 (B-416381) protest changed this provision. AR, Tab 9, RFP amend. 5, at 1-2; Tab 12, RFP amend. 6, at 1-4. AeroSage failed to challenge the inclusion of this solicitation term in its May 15, 2018 protest. Protest (B-416381) at 1-5. Our timeliness rules prevent AeroSage from raising this allegation now. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., supra.

necessary to propose the best prices possible.<sup>7</sup> Id. at 1, 3. The protester also re-raises, for a second time, all of the same pre-award challenges to the terms of the solicitation that were addressed in our August 21 (B-416381) and October 1 (B-416381.3) decisions.<sup>8</sup> Compare Protest (B-416381.1) at 1-5, with Protest (B-416381.3) at 1-5, with Protest (B-416381.4) at 1-6. Although we do not address every argument raised, we have reviewed all of the protester's assertions and find that none provides a basis to sustain the protest.<sup>9</sup>

Generally, agencies must allow at least 30 days from the date of issuance of the solicitation for the receipt of offers. FAR § 5.203(c). However, an agency may allow fewer than 30 days for offerors to respond to a solicitation where, as here, it is acquiring commercial items. Id.; FAR § 12.205(c). When acquiring commercial items, the contracting officer should afford potential offerors a reasonable opportunity to respond

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<sup>7</sup> Specifically, AeroSage asserts: "The solicitation of these two line numbers and the other eight line numbers violated acquisition regulations in several areas listed below and in previous protests including insufficient time and accurate bid information which prejudiced the protester as small business offeror by limiting opportunity to obtain best pricing for the government." Protest (B-416381.4) at 1.

<sup>8</sup> AeroSage's September 4 (B-416381.3) and September 17 (B-416381.4) protests both repeat the same allegations first raised in the initial May 15 (B-416381) protest, namely that: the RFP improperly bundled requirements; each of the CLIN's should have been set aside for small businesses; the solicitation contained overly restrictive solicitation terms; the agency provided inaccurate estimates for the fuel being acquired; and offerors were not provided enough time to respond. Compare Protest (B-416381) at 1- 5, with Protest (B-416381.3) at 1-5, with Protest (B-416381.4) at 1-6. Here, the agency made no changes to the RFP after our August 23 (B-416381) decision, except to set aside CLINs 0004 and 0009 for small businesses, and extend the due date for offers on those two CLINs. AR, Tab 9, RFP amend. 5, at 1-2; Tab 12, RFP amend. 6, at 1-4. Accordingly, AeroSage's attempt to re-raise issues that were addressed in prior decisions amounts to a request for reconsideration. See Amtec Corp., B-240647.4, July 23, 1991, 91-2, CPD ¶ 82 at 4 n.1 ("Our prior decision specifically denied this contention and [protester's] attempt to raise it again is essentially a request for reconsideration."); AeroSage, LLC, B-416381.3, Oct. 1, 2018 (unpublished decision) at 3-4. AeroSage's requests for reconsideration of our August 21 (B-416381) and October 1 (B-416381.3) decisions were dismissed on December 6. AeroSage, LLC--Recon., supra, at 1-4. Accordingly, we need not address these same issues again here.

<sup>9</sup> For instance, the protester again contends that the entire RFP should have been set aside for SDVOSBs in order "to correct the sustained inability" of DLA to "meet [the Small Business Administration's] minimum SDVOSB 3% goal requirements." Protest (B-416381.4) at 4. We dismiss this protest allegation for failure to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f). An agency's alleged failure to meet its set-aside goals does not dictate that any particular procurement should be set aside. AeroSage LLC; SageCare, Inc., B-416279, July 16, 2018, 2018 CPD ¶ 243 at 6 n.8.

considering the circumstances of the acquisition, such as the complexity, commerciality, availability, and urgency of the individual acquisition. FAR § 5.203(b); AeroSage, LLC, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 12; Richen Mgmt., LLC, B-410903, Mar. 10, 2015, 2015 CPD ¶ 105 at 2.

Based on our review of the record, we find that the timeframe allotted by the agency for the submission of offers in response to CLINs 0004 and 0009 to be reasonable. Here, the solicitation was issued for fuel in accordance with the commercial item acquisition procedures of FAR part 12. RFP at 3. Accordingly, DLA was under no obligation to keep the solicitation open for at least 30 days, contrary to AeroSage's assertion. FAR § 12.205(c). The solicitation was first issued on May 1, 2018, and offers were due by May 15, thereby establishing an initial response time of 15 days. RFP at 1. After our August 23 (B-416381) decision, DLA set aside CLINs 0004 and 0009 exclusively for small businesses and extended the due date for the submission of offers by an additional 20 days. AR, Tab 9, RFP amend. 5, at 1-2; Tab 12, RFP amend. 6, at 1-4.

Given the fact that offerors had an initial period of 15 days to prepare their proposals in response to CLINs 0004 and 0009, and were then provided an additional 20 days to update their offers, we find no basis to question the agency's conclusion that the proposal response period provided to offerors was consistent with the FAR's requirements. See AeroSage, LLC, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 12. Furthermore, DLA confirmed that it received multiple offers in response to CLINs 0004 and 0009, and asserts that this provides additional evidence to demonstrate that the time period offerors had to respond to the RFP was more than adequate. COS/MOL at 9. We agree with the agency, and find no basis to sustain AeroSage's protest. See Richen Mgmt., LLC, supra, at 3.

The protest is denied.

Thomas H. Armstrong  
General Counsel