



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Artisan Productions, Inc.

File: B-281409

Date: December 21, 1998

Arthur L. Friedman for the protester.

Amanda Coggins and Ray W. DeHart for Capitol Exhibit Services, Inc.; and
Charlotte Frank for Concept Management Promotional Services, the intervenors.

Kacie A. Haberly, Esq., and Rick P. Glassband, Esq., General Services
Administration, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation's 15-day response period was inadequate is denied where: (1) the solicitation contemplated submission of offers for commercial items and related services and the contracting officer determined that 15 days was a reasonable time to prepare and submit proposals based upon her experience with a previous procurement for this requirement; (2) the requirement was synopsisized in the Commerce Business Daily 42 days before proposals were due; (3) no potential offerors other than the protester complained that the response period was too short; and (4) five offers were received in a timely manner.

DECISION

American Artisan Productions, Inc. (AAP) protests that the Federal Supply Service, General Services Administration (GSA), did not allow sufficient time for preparation of proposals in response to request for proposals (RFP) No. FCXM-T8-980002-N, for the lease of an exhibit booth and related services for several large-scale exhibition projects during fiscal year 1999.

We deny the protest.

The requirement was synopsisized in the Commerce Business Daily (CBD) on September 16, 1998. CBDNet Submission No. 250631, Sept. 16, 1998, at 1. On October 13, the RFP was issued as a total small business set-aside to all firms that responded to the CBD synopsis. RFP at 1; GSA Legal Report at 2. The RFP required that offers be submitted by October 28. RFP at 1. The RFP requested technical and price proposals for a fixed-price lease of a large exhibit booth that can be reconfigured into smaller booths; the exhibit booths will be used at three different trade fairs. RFP at 2, 6, 35. The RFP included options for the lease of

booths for up to four additional shows and for preshow, direct mail marketing services. RFP at 2, 21-25. The agency wanted to lease commercial items; therefore, the RFP included a number of Federal Acquisition Regulation (FAR) provisions germane to acquisitions of commercial items.¹ Contracting Officer Statement at 2; GSA Legal Report at 2.

The protester states that the contracting officer telephoned AAP's president on October 22 to inform him that she was going to destroy the scale models AAP had submitted to GSA in response to the 1997 procurement for the same project and advised him that the RFP for the current requirement had already been issued; AAP's president requested that GSA return the models via Federal Express. Protest at 1. The protester states that, later that same day, the contracting officer informed AAP's president that she could not ship the models and that she would destroy them unless the protester picked them up. Id. The protester also states that, on October 22, it downloaded the RFP from the Internet, requested an extension of the proposal due date, and again requested the return of its models. Id. According to the protester, on October 26, it again requested a 15-day extension of the proposal due date. Id. at 2. Later on October 26, the protester says that it received a Federal Express package that contained its scale models, but they were completely destroyed; the protester notified the contracting officer of this occurrence. Id. The contracting officer did not grant AAP's request for an extension of the proposal due date. Id.; RFP amendment No. 1. Offers were received from five firms by the October 28 deadline. List of Offerors, October 28, 1998. AAP did not submit an offer, but filed this protest shortly before the closing time on October 28.

The protester contends that the 15-day period between issuance of the RFP and the due date for receipt of proposals was insufficient time to prepare and submit a proposal. The protester also contends that the contracting officer further hindered AAP from submitting a timely proposal by improperly destroying the scale models that AAP had submitted in response to the previous solicitation for this work because AAP would have resubmitted those models as part of its proposal. Protest at 1, 2.

Agencies generally must allow at least a 30-day response time for the receipt of proposals from the date of issuance of the RFP. FAR § 5.203(c). However, an

¹The RFP included the following commercial item provisions: Instructions to Offerors--Commercial Items (Aug. 1998) (FAR § 52.212-1); Evaluation--Commercial Items (Oct. 1995) (FAR § 52.212-2); Offeror Representations and Certifications--Commercial Items (Jan. 1997) (Deviation--May 1996) (FAR § 52.212-3); Contract Terms and Conditions--Commercial Items (Apr. 1998) (FAR § 52.212-4); Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items (June 1998) (Deviation--May 1996) (FAR § 52.212-5). RFP at 3-6, 29-31, 33-35, 36-37, 38-44.

agency may allow fewer than 30 days to respond to an RFP when, 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; when establishing the solicitation response time, the contracting officer should consider the circumstances--such as the complexity, commerciality, availability, and urgency--of the individual acquisition. FAR § 5.203(b). Here, the RFP clearly contemplated offers of commercial exhibit booths and related services, and the agency was thus required only to afford potential offerors, including AAP, a reasonable opportunity to prepare and submit proposals.²

The requirement was synopsized in the CBD 27 days before the RFP was issued and 42 days before proposals were due. The CBD announcement stated that GSA would acquire exhibits and related services on a lease-only basis and briefly described the products (including the varying sizes of the exhibit booths required for each trade fair) and services that would be required. CBDNet Submission No. 250631 at 1. The contracting officer's decision to allow only a 15-day response period was based upon her prior experience with the last year's procurement for this requirement. GSA Legal Report at 3; Contracting Officer Statement at 2. In the prior procurement, GSA solicited three separate proposals from each offeror (one each for purchase, lease and rental cost alternatives) and allowed only a 22-day response period. GSA Legal Report at 3. The agency reports that no potential offeror complained that the response period in last year's procurement was too short and that it received adequate competition (i.e., six offers) in response to that solicitation. Id.; Contracting Officer Statement at 2. Because the present RFP is less complex than last year's--the present RFP required proposals only for a lease rather than the several different cost alternatives required last year--the contracting officer determined that a shorter period (i.e., 15 days) would be sufficient for preparation of proposals. Contracting Officer Statement at 2. The contracting

²AAP asserts that the exhibition booths being acquired are not commercial items, because they will have to be extensively modified to meet GSA's specific requirements. As noted above, however, the RFP included several FAR provisions applicable only to acquisitions of commercial items and, therefore, clearly contemplated offers of commercial items or booths that are made of commercial item components. Prior to commenting on the agency's protest report, AAP never complained that the RFP should not seek offers of commercial items or that the modifications necessitated a longer proposal response time. In any event, the FAR definition of "commercial item," FAR § 2.101, clearly encompasses modifications to items that have been sold or leased to the general public so long as such modifications do not significantly alter the nongovernmental functions or essential physical characteristics of the items. Our review of the record indicates that the modifications at issue here are not so extensive as to fall outside this definition. See Aalco Forwarding, Inc., et al., B-277241.8, B-277241.9, Oct. 21, 1997, 97-2 CPD ¶ 110 at 11-12.

officer also reports that no complaints were received from any offeror other than AAP that the response period in the present procurement was too short. Contracting Officer Statement at 2. In addition, the record shows that GSA received offers from five competitors in response to the present RFP. List of Offerors, October 28, 1998. In these circumstances, we have no basis to find that the proposal response period did not afford offerors a reasonable opportunity to prepare and submit proposals.

Regarding the destruction of AAP's scale models, the protester's own account reveals that the contracting officer first asked AAP to pick them up and then returned them to AAP via Federal Express as the protester requested. The contracting officer states that she used a container designed for shipping and attempted in good faith to return the models to the protester. Contracting Officer Statement at 3. GSA reports that the models, which were constructed of cardboard and wood, were packed in a sturdy packing box and left GSA in good condition and must have been damaged while under the control of Federal Express. GSA Legal Report at 4. There is no evidence that their destruction was intentional on the part of the contracting officer. Furthermore, as the agency reports, the RFP did not require offerors to submit scale models, but rather, required offers to include color renderings of the booth to be provided for each show. GSA Legal Report at 4; RFP at 35. Thus, while it is unfortunate that the models were damaged in transit, this allegation provides no basis for sustaining the protest.

The protest is denied.

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