



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

333231

# Decision

**Matter of:** The George Byron Company  
**File:** B-259860  
**Date:** January 20, 1995

## DECISION

The George Byron Company protests the terms of request for proposals (RFP) No. HQ0006-95-R-0003, issued by the Ballistic Missile Defense Organization (BMDO), Department of Defense, for access control operations at BMDO's offices located in Crystal City, Virginia, and the Pentagon. George Byron contends that several of the solicitation's specifications--the standard industrial classification (SIC) code, the offer submission deadline, and the "DX" priority rating--are unduly restrictive.

We dismiss the protest.

The RFP was issued on December 13, 1994, to all offerors, including those potential sources listed on the agency's solicitation mailing list. See Federal Acquisition Regulation (FAR) § 15.403. Although George Byron was on this mailing list, it did not receive its copy of the RFP until it attended a pre-proposal conference on December 19.

On December 30--approximately 2 weeks prior to the scheduled January 13, 1995, closing date--George Byron filed this protest.

To the extent George Byron challenges the SIC code classification--a classification which is used to determine what size businesses will qualify as small businesses for a particular procurement--our Office has no jurisdiction to consider this matter. Sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. §§ 632(a) and 634(b)(6) (1988), authorize the Small Business Administration (SBA) to determine which business enterprises are to be designated "small business concerns" within any industry. The authority to set and designate size standards--i.e., the SIC code classification--and the authority to determine which concerns fall within these standards for a particular industry category, rests exclusively with SBA, and cannot be

considered by our Office.<sup>1</sup> See 13 C.F.R. § 121.201(a) (1994); Bid Protest Regulations, 4 C.F.R. § 21.3(m) (2) (1994); NSI Tech. Servs. Corp., B-253797.4, Dec. 29, 1993, 93-2 CPD ¶ 344.

We also dismiss George Byron's contention that the agency failed to give the firm 30 days to prepare and submit its offer, as required by FAR § 5.203(b). In response to learning that George Byron did not receive its copy of the RFP until 6 days after the solicitation was issued, the agency has since issued an amendment extending the closing date for this requirement an additional 6 days--to January 19--which gives George Byron a full 30 days to prepare and submit its proposal. Since the agency has remedied the alleged defect, we dismiss this ground of protest as academic.<sup>2</sup> See East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

George Byron also challenges the solicitation's DX priority rating as unduly restrictive. We fail to see any basis for this allegation, and therefore dismiss this ground of protest.

Our Bid Protest Regulations provide that a protest shall include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c) (4) (1994), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. Where a protester complains of unduly restrictive requirements in a solicitation, in order to satisfy this legal sufficiency standard, the protester must show that the particular specifications are not necessary to meet the agency's minimum needs. Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50.

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<sup>1</sup>Our Office will only review protests involving an allegedly improper SIC code designation where the protesting party presents convincing evidence that the SIC code was selected in bad faith. See Tri-Way Sec. & Escort Serv., Inc.--Recon., B-238115.2, Apr. 10, 1990, 90-1 CPD ¶ 380. That standard has not been met here; George Byron merely asserts that this solicitation's SIC code "is patently incorrect."

<sup>2</sup>To the extent George Byron contends that the RFP improperly requires each offeror to produce a 50-page proposal in the allotted time span, we merely note that the RFP only requires proposals to be "no more than 50 pages"; thus, offerors may submit shorter proposals.

The DX rating under which this procurement has been classified is used for special defense programs designated by the United States to be of the highest national priority. Under Title I of the Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 et seq. (1988), the President is authorized to require that contracts in support of the national defense be accepted and performed on a preferential or priority basis over all other contracts. See FAR § 12.302(a). The purpose of this priority rating system-- which classifies appropriate procurements with the rating symbols of "DX" (highest national priority) or "DO" (priority over unrated contracts but not "DX" rated contracts) is to ensure that designated programs receive procured goods or services immediately to facilitate rapid industrial mobilization in case of national emergency. See generally FAR subpart 12.3. Consequently, when a contractor receives an order under a rated contract, it is mandated to cease all other non-rated contract performance (if necessary) and fill the rated order as directed. See FAR § 12.303(d).

Although George Byron objects to the DX rating, the protester does not explain how the rating exceeds the government's minimum needs or otherwise restricts George Byron from competing. Since the rating merely requires priority delivery under terms specified in the RFP, and since the protester has not alleged how it is prejudiced by the rating, we will not consider this protest ground further, and dismiss the contention for failure to state a valid basis of protest. See Imaging Equip. Servs., Inc., supra.

The protest is dismissed.

  
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Assistant General Counsel