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Decision

Matter of: Midland Supply, Inc.

File: B-298720.3

Date: May 14, 2007

Richard D. Lieberman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, P.C., for the protester.

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DIGEST

Under solicitation providing for award to offeror whose proposal is found to be the most advantageous to the government based on past performance, delivery, and price, protest challenging selection decision is sustained where the record shows that the best value determination mischaracterized the relative quality of the offerors' on-time delivery records, a key factor in the selection decision.

DECISION

Midland Supply, Inc. protests the award of a contract to Danaher Tool Group under request for proposals (RFP) No. 6FLS-G3-050327-N, issued by the General Services Administration (GSA) for quantities of 50 commercial line items in the 5120 Federal Supply Class (hand tools, non-edged, non-powered). The agency made a new best value determination after we sustained a prior Midland protest objecting to the award to Danaher. Midland Supply, Inc., B-298720.2, Nov. 29, 2006, 2007 CPD ¶ 2. Midland again challenges the agency's award for line item No. 1 for socket wrench sets (an item Midland has provided to the government since 2001) to Danaher, a firm submitting a lower technically rated, lower-priced proposal for this line item, arguing that the best value determination is irrational and arbitrary.

We sustain the protest.

The RFP, issued on February 24, 2006, contemplated awards of fixed-price requirements contracts for a 2-year base period with three 1-year options. The RFP provided that the agency would award contracts to the responsible offerors whose proposals, conforming to the solicitation, were determined to be most advantageous to the government, past performance, delivery, and price considered. Past

performance was comprised of three subfactors--on-time delivery, quality deficiency notices, and orders terminated. The RFP stated that past performance and delivery, when combined, would be considered significantly more important than price, and that if proposals were determined to be essentially technically equal, awards would be made to the firms submitting the lowest prices. The RFP required that delivery be made within 120 calendar days after receipt of order for all items, but permitted offerors to propose a more favorable delivery time. The RFP included a clause entitled "Performance History," which states that the "vendor's Federal Supply Service (FSS) Supplier Rating Reports, from contracts for comparable products, will constitute the primary performance history for the evaluation of the offer." RFP at 104.

In evaluating proposals, the agency assigned the following raw points under the three evaluation factors: excellent (5 points); good (4 points); average (3 points); and poor (0 points). The agency used the following scale in evaluating on-time performance: excellent (90-100 percent on-time); good (80-89 percent); average (70-79 percent); and poor (under 70). These raw scores were then multiplied by the following weights: 35 percent for both past performance and delivery (for a total combined weight of 70 percent) and 30 percent for price. The agency then added the weighted scores together to arrive at a total point score for each proposal.

In evaluating Midland's past performance, the agency assigned it a raw score of 3 points under the on-time delivery subfactor based on Midland's [DELETED]-percent on-time delivery record.¹ Because Midland had no quality deficiency notices and no terminated orders, the agency assigned it a raw score of 5 points under each of the other two past performance subfactors. The agency averaged these scores, for a final past performance raw score of 4.34 points. Because Midland proposed a [DELETED]-day delivery schedule, the agency assigned it the highest raw score of 5 points under the delivery factor.² Midland's price for line item No. 1--\$[DELETED] per item--received a raw score of 3 points. Contracting Officer's (CO) Statement,

¹ It is undisputed that the protester has a [DELETED]-percent on-time delivery record for the last 2-1/2 years for the part being procured.

² With respect to the delivery evaluation factor, the agency conducted a market survey in October 2005, in which nine firms, including Midland and Danaher, participated. Eight of the firms, including Midland, responded that delivery could be accomplished in 60 days. Based on the results of the market survey, the agency used 60 days as the lowest projected delivery timeframe. As a result, the agency determined that proposed delivery schedules of 60 days or less would be evaluated as excellent and assigned a raw score of 5 points, while proposed delivery schedules of 61 to 90 days would be evaluated as good and assigned a raw score of 4 points.

Sept. 26, 2006, at 4.³ (Midland's price was approximately [DELETED] percent higher than Danaher's price.)

In evaluating Danaher's past performance, the agency assigned it a raw score of 3 points under the on-time delivery subfactor based on Danaher's [DELETED]-percent on-time delivery record. Because Danaher had no quality deficiency notices and no terminated orders, the agency assigned it a raw score of 5 points under each of the other two past performance subfactors. The agency averaged these scores, for a final past performance raw score of 4.34 points, the same as Midland's. Because Danaher proposed an [DELETED]-day delivery schedule, the agency assigned it a raw score of 4 points under the delivery factor. Danaher's price for line item No. 1--\$[DELETED] per item--received a raw score of 5 points. Id. at 3.

The agency then multiplied the raw scores for the three evaluation factors by the weights assigned to each of these evaluation factors, which yielded the following results for the four top-scoring firms, including Midland and Danaher:

	Midland	Offeror A	Offeror B	Danaher
Past Performance	152	[DELETED]	[DELETED]	152
Delivery	175	[DELETED]	[DELETED]	140
Price	90	[DELETED]	[DELETED]	150
Total Point Scores	417	418	430	442

Agency Report (AR), Tab 10, Evaluation Chart.

The agency awarded a contract for line item No. 1 to Danaher because its proposal received the highest total point score of the 15 proposals received.

Midland's previous protest challenging the agency's decision to award line item No. 1 to Danaher argued that the agency merely mechanically considered the total point scores assigned to the Midland and Danaher proposals and then awarded to Danaher because its proposal had the highest total point score. Midland maintained that the agency made no meaningful price/technical tradeoff, pointing out, for example, that the agency failed to consider whether Midland's proposed [DELETED]-day delivery schedule was worth the payment of an approximately [DELETED] percent price premium, in light of Danaher's significantly longer proposed delivery schedule of

³ With regard to price, points were assigned based on comparison to the lowest price received. Thus, for example, a raw score of 5 points was assigned to prices within 5 percent of the lowest proposed price, and a raw score of 4 points was assigned to prices within 6-10 percent of the lowest proposed price.

[DELETED] days. We sustained the protest and recommended that the agency perform and document a new price/technical tradeoff analysis.

In response to our recommendation, the CO prepared a new best value determination. After noting that the protester's proposed delivery time was "substantially better" than the awardee's, the contracting officer stated as follows with regard to the past performance of the two offerors:

Midland's past performance had substantial weaknesses as follows: Midland's past performance reflected an on-time rate of [DELETED] according to statistics provided by the Administrative Contracting Officer. Danaher's past performance was significantly better than that of Midland. The evaluation of past performance for Danaher reflected the following: Danaher had an on-time rate of [DELETED]. As it relates to the delivery and past performance evaluation factors, the Government is able to manage a slower delivery in the stock program but poorer delivery cannot be controlled and could result in GSA being unable to meet its requirements to the U.S. military--its major customer. The price offered by Midland Supply was \$[DELETED], which is [DELETED] than that of Danaher which offered \$[DELETED]. When reviewing the evaluation factors of delivery, past performance and price, it is the opinion of the contracting officer that the shorter delivery time offered by Midland, who has a past performance history of [DELETED], when compared to Danaher, which offered a [DELETED] day delivery time, and which has an excellent record of past performance, does not justify payment of the higher price of \$[DELETED] offered by Midland. As previously stated, the needs of the government related to a shorter delivery time, as offered by Midland, can be handled through good inventory management and more frequent orders. In view of this, the proposal for item 1 provided by Danaher Tool Group is determined to be the best value to GSA.

Supplemental (Supp.) AR, Tab 14, Best Value Determination at 1 (emphasis added).

Based on this tradeoff analysis, the agency again selected Danaher for award.

The protester argues that the on-time delivery subfactor scores for it and the awardee were the same, meaning that they both fell within the "average band," and that therefore the agency could not properly consider the [DELETED] percent difference in the offerors' on-time delivery percentages in its tradeoff analysis. We disagree.

There is nothing improper about an agency's decision to look behind ratings given proposals by evaluators in an attempt to ascertain the true relative strengths and weaknesses of proposals. ATA Def. Indus., Inc., B-282511.2, July 21, 1999, 99-2 CPD

¶ 33 at 12. Adjectival ratings and point scores are but guides to, and not substitutes for, intelligent decision making. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6. They are tools to assist source selection officials in evaluating proposals; they do not mandate automatic selection of a particular proposal. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12. Those officials have broad discretion in determining the manner and extent to which they will make use of, not only the adjectival ratings or point scores, but also the written narrative justification underlying those technical results, subject only to the tests of rationality and consistency with the evaluation criteria. The propriety of the price/technical tradeoff decision turns on whether the selection official's judgment concerning the significance of the difference in the technical ratings was reasonable and adequately justified. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

The shortcoming in the agency's best value determination here is not that it considers the possible value to the agency of the small difference in the on-time delivery percentages, but rather that it in effect mischaracterizes the offerors' delivery records. First, the agency states that the protester's past performance⁴ had "substantial weaknesses" as reflected in an on-time delivery rate of [DELETED]. In fact, as noted above, an on-time delivery rate of [DELETED] percent merited a rating of "average," and the characterization of that rate as reflecting a substantial weakness is unreasonable. Similarly, the agency concludes that the awardee's past performance was "significantly better" than the protester's because the awardee had an on-time rate of [DELETED] percent, even though that rate is only [DELETED] percent better than the protester's and is also in the average range. Moreover, the best value determination characterized the awardee's average performance as "excellent," which is likewise inconsistent with the rating scheme used by the agency. Taken together, these misstatements, which were material to the agency's best value determination, are unreasonable and inconsistent with the evaluation scheme, and could not be the basis for the best value determination made by the agency here.

In defending its best value determination, the agency argues that, while it may have contained some inaccurate language, the determination itself has a rational basis, and the agency reasonably considered past performance information. Although the protester offered a shorter delivery time, the agency argues, it is not as reliable as the awardee in making deliveries on time. Because the agency is more certain when the awardee's parts will be delivered, the agency maintains that it can mitigate the protester's advantage of a "significantly better" proposed delivery time through more efficient inventory management.

⁴ The agency refers repeatedly to past performance, although the discussion concerns one subfactor of past performance, on-time delivery.

In assessing the reasonableness of the best value determination, we cannot overlook either the language used or the conclusion that formed the basis of the determination, namely, that the awardee had a “significantly better” on-time delivery record than the protester, and that this factor outweighed any advantage of the shorter delivery time offered by the protester. Without a reasonable explanation, supported by the record, of why the [DELETED] percent difference in on-time delivery rates is a meaningful indicator of the relative quality of the protester’s and the awardee’s proposals, we cannot conclude that the best value determination is reasonable.

Further, in making its qualitative assessment of the offerors’ on-time delivery performance, the agency ignored the fact that for 2-1/2 years the protester has achieved a [DELETED] percent on-time delivery record for the very part being procured. The agency argues that it is precluded from considering this fact by the plain language of the “Performance History” clause in the RFP, quoted above. We disagree. The clause says simply that the Federal Supply Schedule supplier rating reports for “contracts for comparable products” will constitute the “primary” performance history. In our view, this language allows the agency the discretion to consider as particularly relevant and predictive of future performance the incumbent’s past performance on prior contracts for the same item. See Federal Acquisition Regulation § 15.305(a)(2) (currency of information and general trends in contractor’s performance shall be considered); United Paradyne Corp., B-297758, Mar. 10, 2006, 2006 CPD ¶ 47 at 5-6. In fact, once the agency decided to look behind the raw scores for the on-time delivery subfactor, we think it was unreasonable for it not to consider this performance data in its assessment of the relative quality of the offerors’ on-time delivery records.

RECOMMENDATION

We recommend that the agency perform and document a new price/technical tradeoff analysis. If the agency determines that Danaher’s proposal for line item No. 1 is not the most advantageous to the government, we recommend that the agency terminate Danaher’s contract for this line item and award to the offeror whose proposal is determined to be the most advantageous. In addition, we recommend that the agency reimburse Midland for the reasonable costs of filing and pursuing this protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2006). Midland’s certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel