



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Pride Mobility Products Corporation

File: B-291878

Date: April 8, 2003

Scott Marcus for the protester.

Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the protester's motorized scooters were technically unacceptable because they failed to timely stop and were thus unsafe.

DECISION

Pride Mobility Products Corporation protests the determination by the Department of Veterans Affairs that its motorized scooters were technically unacceptable under request for proposals (RFP) No. RFP-797-NC-03-0008. Pride challenges the agency's findings that its three-wheel and four-wheel Victory scooters were slow to stop and thus were unsafe.

We deny the protest.

The RFP, issued November 8, 2002, provided for the award of a requirements contract, for a base year with four 1-year options. Award was to be made, without discussions, to the offeror whose offer "conforming to the solicitation will be most advantageous to the Government, price and other factors considered." The evaluation factors, listed in descending order of importance, were technical, price, quality/past performance, and small disadvantaged business participation. RFP at 32.

Under the technical factor, the agency was to evaluate the following subfactors: stability and safety, ease of loading into a car, performance, modification options, quality of wheels, durability, ease of use, specified test results, and comfort. A rating of "poor" under stability and safety "will result in the offer being rejected [and] [t]he remaining evaluation [sub]factors will not be considered." RFP at 32.

The RFP required offerors to submit “product samples” (i.e., scooters) for evaluation in addition to a technical and business proposal. RFP at 25. These product samples were tested by an evaluation team in both indoor and outdoor settings.¹ In order to determine stability and safety, the team considered such things as maneuverability, turning radius, and stopping distance. Declaration of Agency Physician Evaluator ¶ 6. According to the RFP, the actual performance of the scooters was to be given “significant weight” under the technical factor. RFP at 32.

Pride submitted product samples. Two of its sample scooters--the “Victory 3” (three-wheel) and “Victory 4” (four-wheel) scooters--were rejected because they received a rating of poor under the stability and safety subfactor, primarily due to a “braking deficiency.” The agency found that the scooters “did not stop within a reasonable distance,” which was found to be a “significant disadvantage” and could result in injury. Indeed, two of the four testers had crashes with the Victory 3 as a result of the long braking distance. The Victory 3 was also found to be unstable on gravel surfaces. The Victory 4 had similar braking problems and after discussions with the individuals who evaluated the Victory 3, the agency decided to deem the Victory 4 unsafe.² The agency noted that no other scooters posed the braking problems of the Victory 3 and Victory 4, including other scooter models submitted by Pride. Declaration of Agency Physician Evaluator ¶ 7. On December 20, the agency notified Pride that its offers for the Victory 3 and Victory 4 scooters “did not pass the technical evaluation and [would] receive no further consideration.” Agency Report, Tab 9, Agency Letter to Pride, Dec. 20, 2003. Pride protests this determination.

Our Office will review an allegedly improper technical evaluation of product samples to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. We will not make an independent determination of the performance of the offeror’s product; rather, we will review the evaluation record, including the results of any test demonstration, to ensure that the agency’s technical judgment has a rational basis and is consistent with the stated evaluation criteria. Sun Chemical Corp., B-288466 et al., Oct. 17, 2001, 2001 CPD ¶ 185 at 7.

¹ The evaluation team consisted of medical doctors, occupational therapists, physical therapists, prosthetic representatives, a representative of Paralyzed Veterans of America, a biomedical engineer from the National Center for Patient Safety, and wheelchair/scooter repairmen. Contracting Officer’s Statement at 1.

² The Victory 4 initially received a “good” rating, but after the evaluators further discussed the braking concerns, this rating was lowered to “poor.” Declaration of Agency Physician Evaluator ¶ 8. The agency also found the Victory 4 to exceed the size limitations, but this was not a basis for rejecting Pride’s Victory 4 scooter. Contracting Officer’s Statement at 2.

As noted above, the agency tested each scooter for stability and safety, as contemplated by the RFP, and determined that the braking deficiencies could result in injury. The RFP informed offerors that actual performance would be given “significant weight” and, here, two out of four testers crashed due to braking problems. Given the RFP’s emphasis on safety, and the testing results obtained, we think the agency’s rating of poor under the stability and safety subfactor was reasonable, as was its finding of technical unacceptability.

Pride admits that the braking feature is intentional, but, contrary to the agency’s evaluation judgment, it asserts that this is a desirable safety feature. Furthermore, Pride contends that the braking parameters may be adjusted by reprogramming the scooters, and argues that this should be considered by the agency. However, this information was not provided to the agency at the time of proposal submissions, and the agency is under no obligation to consider it now. Given the test results, Pride’s samples were reasonably considered unsafe for the agency’s purposes.³

In sum, we find the agency’s determination that Pride’s scooters were technically unacceptable was reasonable and consistent with the RFP’s criteria.⁴

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Pride suggests that the scooters were not operated properly by the evaluators, based on a statement of agency counsel in a motion to dismiss referring to the scooters’ “failure to stop when the brake was pressed.” Agency’s Motion to Dismiss at 2. According to Pride, the braking mechanism is not engaged by pressing, so Pride concludes that the scooters must have been operated improperly. However, the agency’s counsel admits that he spoke without knowledge of how the scooters were tested, and, as noted above, the individuals testing the scooters consisted of experienced clinicians and operators, not persons unfamiliar with scooter operations, and the record does not indicate that the testers operated the scooters’ braking mechanisms incorrectly.

⁴ Pride also protests that the evaluation criteria and ratings were not clearly defined. However, these protest allegations are untimely because they concern solicitation improprieties, which must be protested by the time set for receipt of initial proposals in order to be timely. 4 C.F.R. § 21.2(a)(1) (2003).