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Decision

Matter of: United Valve Company

File: B-295879

Date: April 25, 2005

Brian J. Donovan, Esq., and Peter B. Jones, Esq., Jones & Donovan, for the protester. Capt. Victor G. Vogel and Capt. Danny Lee, United States Army Materiel Command, for the agency.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where agency reasonably granted source approval to awardee after concluding that awardee was operating a previously approved source, and would produce part using same manufacturing facility, machinery, trained personnel, and test stands.
 2. Protest is denied where, although agency awarded contract based on longer delivery schedule that awardee requested after deadline for submission of final proposal revisions, the record shows that agency had waived schedule specified in the solicitation for both competitors, and protester has not shown competitive prejudice, since its own requested schedule was already longer than schedule granted to awardee, and protester's proposal offered a higher price.
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DECISION

United Valve Company (UVC), a small business, protests the award of a contract to Logistical Support, LLC (LS) by the United States Army Materiel Command (AMC) under request for proposals (RFP) No. W58RGZ-04-R-0567 for flutter dampeners, a part used in the UH-1 Huey helicopter. UVC argues that the agency unreasonably regarded LS as an approved source, and improperly granted LS a relaxed delivery schedule, which LS requested after the deadline for submission of its final proposal revision (FPR).

We deny the protest.

The RFP sought proposals from two qualified sources,¹ to supply a base quantity of 316 flutter dampeners, and included two options for additional quantities of 316 units each, to be exercised later. RFP at 1-3. Award was to be made to the lowest-priced acceptable offeror. RFP at 45.

UVC objects that the source approval of LS was unreasonable. The record shows that, at the time that the RFP was issued, Hill Aerospace & Defense LLC was an approved source. The agency subsequently granted a source approval to LS on November 4, 2004, “in lieu of Hill Aerospace and Defense.” Agency Report (AR), Tab Q, Source Approval Memorandum, at 1. UVC argues that the source approval of LS was erroneous because it was allegedly based on an “operations agreement” that had expired prior to the date of the approval and, in any case, that agreement did not provide LS with rights to use Hill’s “proprietary information.” Protester’s Supplemental Comments (Mar. 10, 2005) at 2.

A contracting agency has the primary responsibility for determining its minimum needs and for determining whether a previously unapproved source will satisfy those needs, since it must bear the burden of difficulties incurred by reason of a defective evaluation. Chromalloy Gas Turbine Corp., B-234272, May 17, 1989, 89-1 CPD ¶ 474 at 2. Whether an offeror seeking source approval has submitted sufficient information to convince the agency that it will meet the agency’s minimum needs is essentially a technical judgment committed to the agency’s discretion, id. at 3, which we will not disturb unless it is unreasonable. Service & Sales Inc., B-247673, June 29, 1992, 92-1 CPD ¶ 545 at 3. A protester’s mere disagreement with an agency’s technical judgment does not render the judgment unreasonable and does not provide a legal basis for sustaining a protest. Astrosystems, Inc., B-261673, B-261673.2, Dec. 7, 1995, 95-2 CPD ¶ 267 at 4.

Here, we have no basis to question the Army’s decision to grant source approval to LS.² Despite the fact that LS submitted the operations agreement to support its source approval request, the agency’s conclusion that LS was operating Hill in connection with the production of this part was not based on the particular terms and restrictions of the operations agreement. In making its source approval decision

¹ Although the synopsis identified the two sources that would be solicited, it also advised additional sources to seek source approval, and stated that “All responsible sources may submit an offer which shall be considered by the agency.” AR, Tab A, Synopsis, at 1. The RFP itself did not indicate a limitation on competition in block 22 of the cover page, standard form 33.

² UVC objects that LS represented that parts delivered under the contract would be marked (improperly) with the CAGE code for Hill, rather than for LS. We believe that this is a matter for the agency to address during contract administration, and does not undermine the agency’s approval of LS as a source for the flutter dampener.

the agency has shown that it was aware, through information provided by the Defense Contract Management Agency (DCMA), that Hill and LS operate under the same management and are effectively the same company; thus, LS would use the same manufacturing facility, machinery, trained personnel, and test stands as Hill had in producing the flutter dampener. DCMA also indicated that it had conducted two on-site reviews, in 1999 and 2000. Supplemental AR, Attach. 2, Critical Safety Item Engineer's Statement, at 1-2. LS also submitted a source approval request to DCMA, which included a letter explaining that "In May of 2004 the owners of Hill Aerospace & Defense LLC and Logistical Support LLC exchanged 100 percent of their ownership interests for shares of Logistical Support, Inc., a publicly traded company." Supplemental AR, Attach. 4, Letter from LS to DCMA (Sept. 7, 2004). The agency report also contains a pre-award survey of LS, dated October 29, 2004, which reached essentially the same conclusions concerning LS's assumption of Hill's operations. AR, Tab S, Preaward Survey Manager's Comments/Recommendations, at 1.

UVC challenges the supporting documents, from LS and from DCMA regarding the control of Hill, as being unsupported. In particular, UVC identifies an August 5, 2004 e-mail from DCMA, which states that LS had assumed management and control of Hill, and would operate Hill. AR, Tab G, E-mail from DCMA Industrial Specialist to AMC Contract Specialist. UVC argues that the agency should not have accepted this statement from DCMA "without attribution or support for the accuracy of that statement." UVC Supplemental Comments (Apr. 5, 2005) at 1. UVC also objects that assurances from LS, by themselves, are suspect, or even misrepresent the ability of LS to produce the flutter dampener. However, UVC has provided no reason for the agency to question the veracity of DCMA. In short, we find that the Army had a reasonable basis for accepting LS as an approved source.

The RFP provided that "Bids/offers shall be evaluated and award made to the responsive, responsible offeror whose offer represents the lowest overall cost to the Government." RFP at 45. There is no dispute that LS proposed the lower overall cost, but UVC argues that LS was unfairly allowed to extend its delivery schedule from the one proposed in its FPR.

In their initial proposals, both offerors proposed significantly later delivery than the August 23, 2004 delivery date specified in the RFP. The agency found both offerors' schedules acceptable, and thus waived the RFP schedule for both firms. The agency subsequently requested FPRs, and in evaluating the FPRs, found acceptable the delivery schedules proposed by both offerors, which were, once again, longer than the RFP schedule.

Some months later, the agency requested that each offeror extend its proposal. In doing so, UVC repeated its delivery schedule: "As stated on our quote, delivery to commence [Deleted]." AR, Tab W, E-mail from UVC to Contract Specialist (Jan. 19,

2005).³ LS extended its proposal and stated that “we will meet the previously quoted delivery dates if [the agency] desires,” but LS also proposed an alternate schedule that “we [LS] would rather have . . . if it would be acceptable to [the agency].” AR, Tab W, E-mail from LS to Contract Specialist (Jan. 18, 2005).

The agency selected LS for award based on its lower price, consistent with the selection criteria in the RFP quoted above. The contract, awarded on January 24, reflects a schedule that is close to, but slightly longer still, than the alternate schedule requested by LS (and significantly longer than the schedule in the FPR from LS).

Under UVC’s schedule, it would complete delivery of the 316 units by 360 days after receipt of order.⁴ Even under the lengthened schedule provided in the contract, LS will complete delivery of the 316 units by 279 days after contract award, and at a lower price than UVC.

In essence, UVC was already competing with an understanding that a schedule as long as the 360-day schedule that UVC proposed would be acceptable; therefore, UVC was not competitively prejudiced by the agency’s acceptance of LS’s lower-priced proposal and a delivery schedule of 279 days, which was still shorter than UVC’s proposed schedule. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions; that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Although UVC argues that allowing LS to have a longer schedule amounts to unequal treatment, UVC has failed to demonstrate competitive prejudice with respect to this ground of protest.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Although the offerors use the terms “quote” and “quoted,” the record is clear that the offerors submitted proposals on standard form 33 in response to an RFP, not quotations.

⁴ The RFP provided that the agency would treat a delivery expressed in terms of receipt of order, as UVC did, as being from 1 working day to 5 calendar days after award, depending on how notice of award was to be transmitted. For purposes of this decision, this difference is insignificant.