



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Aviation Technology, Inc.

File: B-298313.2

Date: September 21, 2006

John Verderame for the protester.

J.R. Cohn, Esq., and Julius Rothlein, Esq., U.S. Marine Corps, for the agency.

Robert C. Single, Esq., for Dayton T. Brown, Inc., an intervenor.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to agency's award of contract to higher-priced, higher-rated firm than protester is denied where acquisition was conducted on "best value" basis and record shows agency made reasonable price/technical tradeoff.

DECISION

Aviation Technology, Inc. (ATI) protests the award of a contract to Dayton T. Brown, Inc. under request for quotations (RFQ) No. M00146-06-T-9007, issued by the U.S. Marine Corps to acquire a quantity of hydraulic pump test stands. ATI asserts that the agency made an unreasonable source selection decision.

We deny the protest.

The RFQ contemplated the award of a fixed-price contract to furnish two hydraulic pump test stands. Firms were advised that award would be made on a "best value" basis considering price and the following non-price factors: technical approach (worth up to 50 of 100 possible points), corporate experience (25 points) and past performance (25 points). Firms were further advised that the non-price factors combined were significantly more important than price.

The agency received numerous quotations and, after evaluating them, assigned the protester's a combined score of 65 points and Brown's 85 points. Brown's price was \$285,250, while the protester's was \$265,876. On the basis of these evaluation results, the agency decided to make award to Brown without discussions, finding that the firm's quotation represented the best value to the government; the agency

specifically determined that the slight price premium associated with award to Brown versus the protester was offset by the evaluated technical superiority of Brown's quotation.

After being advised of the agency's source selection decision, ATI filed an agency-level protest. ATI questioned the source selection decision on grounds that ATI had offered a product that met the minimum technical requirements of the solicitation; that ATI is approved (by the original equipment manufacturer of one of the hydraulic pumps to be tested) as a manufacturer of the test stands; and that ATI's price was lower than Brown's. The agency denied ATI's protest. ATI then filed this protest with our Office, asserting that its quoted equipment met the minimum requirements of the solicitation at a price lower than Brown's and that, consequently, it should have received the award.

ATI misunderstands the nature of this acquisition. Where, as here, a solicitation calls for detailed technical proposals and sets forth weighted evaluation criteria that enable the agency to make comparative judgments about the relative merits of competing submissions, the agency properly may rate one submission higher than another based on its exceeding the solicitation's stated requirements. ManTech Sec. Tech. Corp., B-297133.3, Apr. 24, 2006, 2006 CPD ¶ 77 at 7; see also Chicago Dryer Co., B-293940, June 30, 2004, 2004 CPD ¶ 137 at 4 (protest that agency should have selected protester's technically acceptable, lower-priced proposal over awardee's technically superior, higher-priced proposal that exceeded solicitation's minimum requirements was denied where solicitation provided for comparative evaluation of technical proposals, which indicated that qualitative distinction would be made between competing submissions).

Here, the record shows that the agency rated Brown's quotation higher than the protester's primarily because Brown's provided several features that exceeded the minimum requirements of the solicitation in ways deemed beneficial to the agency. For example, the record shows that Brown's test stand had a component that was larger than required under the specifications, which the agency deemed desirable because it would enhance the ease of operating the device.¹ In comparison, ATI's quotation did little more than reiterate the specifications verbatim; it provided nothing that exceeded the minimum requirements of the RFQ. Since firms were

¹ Our discussion here is general in nature because this aspect of Brown's quotation appears proprietary to the firm. We did not issue a protective order in connection with this protest--under which such information would have been available to counsel admitted to the protective order--because ATI elected not to retain counsel. Consequently, only a redacted version of the agency report was furnished to ATI. Nonetheless, we have carefully reviewed the entire record in camera, including all of the agency's evaluation materials and the quotations submitted by the firms. DSC Cleaning, Inc., B-292125, June 25, 2003, 2003 CPD ¶ 118 at 2 n.2.

specifically advised that the agency was conducting this acquisition on a best value (as opposed to low price, technically acceptable) basis, there was nothing improper in the agency's making these qualitative distinctions between the quotations, and selecting the higher-priced Brown quotation as providing the most advantageous product considering price and non-price factors; this is especially so in light of the fact that the RFQ advised firms that the non-price factors were significantly more important than price.

ATI asserts that the agency should have amended the solicitation and allowed all firms to submit quotations based on the enhanced features that formed the basis for the award to Brown. There was no basis for the agency to do this. The procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (2000), specifically prohibits federal officials from disclosing proposal information. This argument therefore does not provide a basis for sustaining the protest.

The protest is denied.

Gary L. Kepplinger
General Counsel