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Decision

Matter of: Freedom Lift Corporation

File: B-298772.2

Date: January 25, 2007

Huey P. Cotton, Esq., Cozen O'Connor, for the protester.
Scott M. Heimberg, Esq., Thomas P. McLish, Esq., Andrea T. Vavonese, Esq., and
Lauren R. Bates, Esq., Akin Gump Strauss Hauer & Feld LLP, for Bruno Independent
Living Aids, Inc., an intervenor.
Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting officer did not act inconsistently in selecting lower-rated, lower-priced item for award under one line item and higher-rated, higher-priced item for award under another where price/technical trade-off considerations pertaining to the two line items were distinct.
2. Under solicitation for wheelchair/scooter lifts to be installed in motor vehicles used by mobility-impaired veterans, protest that specification requiring that lifts be capable of lifting 350 pounds should be interpreted as requiring that lifts be capable of lifting 350 pounds on majority of vehicles owned by mobility-impaired veterans is denied where solicitation contained no language indicating that compliance with specification was required in a majority—or in any specific percentage—of vehicles.

DECISION

Freedom Lift Corporation protests the award of line items 2, 5, and 7 to Bruno Independent Living Aids, Inc. under request for proposals (RFP) No. 797-NC-05-0009, issued by the National Acquisition Center of the Department of Veterans Affairs (VA) for wheelchair lifts and carriers, and scooter lifts.¹ The protester contends that the

¹ While Freedom Lift protested the award of line item 8 in addition to the above items in an agency-level protest that it pursued prior to protesting to our Office, we did not consider its protest to our Office to raise an objection to the award of item 8. The agency also interpreted the protest as failing to raise an objection to the award of

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agency acted inconsistently in selecting Bruno's lift for award under item 2, while failing to select the protester's own lift for award under item 8. The protester also argues that the lift that Bruno offered in response to line items 5 and 7 failed to comply with an RFP specification pertaining to weight capacity.

We deny the protest.

BACKGROUND

The RFP, which was issued on January 20, 2005, sought unit prices for estimated quantities of various types of wheelchair lifts and carriers, and scooter lifts. Prices were sought for a base and 4 option years. Of relevance to this protest, line item 2 sought offers for a power-operated wheelchair carrier for manual wheelchairs and hitches; line item 5 sought offers for a hoist system interior power-operated lift for scooters; and line item 7 sought offers for a hoist system interior power-operated lift for power wheelchairs. The RFP included specifications that defined required features of the lifts and carriers, and offerors were required to submit descriptive literature demonstrating compliance with these specifications. RFP amend. 8, at 40, 41. The only specification pertaining to item 5 required a minimum weight capacity of 85 pounds and a maximum weight capacity of 350 pounds; similarly, the only specification pertaining to item 7 required a minimum weight capacity of 87 pounds and a maximum weight capacity of 350 pounds.² Required features of item 2 were that the carrier be constructed of all-weather material; that it have a locking device, a cover, a manual emergency back-up system, minimum and maximum weight

(...continued)

item 8, noting in its report that "there does not appear to be any challenge to line item 8," Agency Report at 2, a position that the protester did not take issue with or attempt to rebut in its comments on the report. To the extent that the protester raised arguments regarding the award of item 8 in its January 12, 2007 submission to our Office, we regard the arguments as untimely because they are premised on information that was known to the protester at the time it filed its initial protest with us on October 20, 2006 (i.e., that the evaluators had failed to consider the automatic lock feature of its product). See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2006). We have included some information regarding the award under item 8 in this decision because it is relevant to the argument raised by the protester regarding the award under item 2.

² The agency explains in its report that it did not intend the reference to a maximum weight capacity of 350 pounds to limit the amount that the device could lift to 350 pounds; rather, it intended to furnish notice that the lift had to be capable of lifting 350 pounds. Agency Report at 4 n.3. Neither the protester nor the intervenor has argued that it had a contrary understanding of the requirement.

capacities of 20 and 100 pounds, respectively, and 12 inches clearance from the ground; and that it mount to various types of hitches.

The solicitation explained that after the product literature and technical proposals had been evaluated to determine compliance with the specifications, a “subjective technical evaluation” of the lifts and carriers would be performed. RFP amend. 8, at 46. The following four subfactors, listed in descending order of importance, were to be considered in this evaluation: safety and stability, performance, number of warranty years, and dealer network. Id. at 46-47. Under the safety and stability subfactor, the VA was to assess the probability of the device malfunctioning and/or injuring the user. Offerors were advised that if a device received a rating of poor under the safety and stability factor, it would be rejected without further consideration. Under the performance subfactor, the agency was to “assess features that affect operation, functionality and suitability for veteran patients, including, but not limited to, [e]ase of use (with or without mobility aid); securement system (occupied or unoccupied); tilting device (for line item #1 only); operating switches (including backup system); and ground clearance (occupied or unoccupied).” Id. at 46.

The RFP provided that in addition to the foregoing technical subfactors, proposals would be evaluated on the basis of price, the offeror’s past performance and reputation for quality, and the offeror’s small disadvantaged business participation targets. The solicitation advised that all factors other than price, when combined, were somewhat more important than price.³ The solicitation further advised that the government intended to award one contract per line item to the offeror whose proposal was determined most advantageous to the government, price and other factors considered.

Multiple offerors submitted offers for line items 2, 5, 7, and 8. A technical evaluation panel rated the proposals in accordance with the following scale: superior, very good, good, acceptable, fair, and poor. Ratings and evaluated prices for offers received in response to line item 2 were as follows:

³ According to the Price Negotiation Memorandum, the source selection plan assigned the above factors the following weights: technical evaluation—45 percent; price—40 percent; past performance—10 percent; and SDB participation—5 percent. Price Negotiation Memorandum at 3.

Offeror	Overall Technical	Price	Past Performance	SDB
Bruno	Good	\$2,695,003	Neutral	Poor
[Deleted]	Acceptable	\$3,641,187	Neutral	Poor
[Deleted]	Good	\$3,959,700	Neutral	Acceptable
Freedom	Very Good	\$3,510,082	Neutral	Acceptable

Agency Report at 5. The contracting officer determined that the advantage of Bruno's proposal with regard to price outweighed the advantage of Freedom Lift's proposal with regard to the technical and SDB participation factors and selected Bruno's proposal for award as representing the best value to the government.

Ratings and evaluated prices for offers received in response to line items 5 and 7 were as follows:

Offeror	Overall Technical	Price	Past Performance	SDB
Bruno	Good	\$38,692,461	Neutral	Poor
[Deleted]	Good	\$51,901,280	Neutral	Acceptable
[Deleted]	Acceptable	\$56,139,008	Neutral	Poor
Freedom	Good	\$44,459,048	Neutral	Acceptable
[Deleted]	Acceptable	\$69,273,376 ⁴	Neutral	Poor
[Deleted]	Acceptable	\$46,549,561	Neutral	Poor

Id. at 6. The contracting officer determined that Bruno's offer represented a better value than Freedom Lift's due to its lower evaluated price and selected Bruno for award of both items.

Ratings and evaluated prices for offers received in response to line item 8 were as follows:

⁴ The only difference between the ratings and prices received for items 5 and 7 was [deleted] total evaluated price. As noted above, its total evaluated price for item 5 was \$69,273,376; its total evaluated price for item 7, in contrast, was \$72,121,630.

Offeror	Overall Technical	Price	Past Performance	SDB
[Deleted]	Good	\$2,524,020	Neutral	Poor
Harmar	Superior	\$3,332,640	Neutral	Acceptable
[Deleted]	Acceptable	\$3,114,921	Neutral	Poor
Freedom	Good	\$2,473,404	Neutral	Acceptable
[Deleted]	Good	\$3,240,515	Neutral	Poor

Agency Supplemental Reply, Jan. 10, 2007, at 3.⁵ The contracting officer determined that the technical superiority of Harmar's lift more than offset its higher price and selected Harmar for award of the item.

By letter dated August 9, 2006, the contracting officer notified Freedom Lift of the awardees of the various line items and their base year unit prices. Of relevance to this protest, the protester was notified that line items 2, 5, and 7 had been awarded to Bruno and line item 8 to Harmar. Freedom Lift immediately sought clarifying information regarding several of the items and on August 16 requested a debriefing. The contracting officer responded by letter dated August 24, in which she explained the ratings assigned the awardees' and the protester's offers under the various line items and the basis for her best value determination with regard to each. Freedom Lift filed an agency-level protest on September 1. By letter dated October 10, the contracting officer denied the protest, and on October 20, Freedom Lift protested to our Office.

DISCUSSION

Freedom Lift argues that the agency acted inconsistently (and thus unreasonably) in selecting Bruno's proposal, which was lower in price but had received a lower technical rating than its own, for award under line item 2, while selecting Harmar's proposal, which was higher in price but had received a higher technical rating than its own, for award under line item 8.

In determining that Bruno's proposal represented the best value to the government under item 2, the contracting officer concluded that "[a]lthough Freedom Lift had some desirable features that earned them a rating of 'Very Good' vs. Bruno's 'Good' rating, VA is not willing to pay a significantly higher price for them." Price Negotiation Memorandum at 63. In determining that Harmar's proposal, which had received a technical rating of superior as compared with the protester's rating of good, represented the best value under item 8, she concluded that "the enhanced safety feature of the automatic lock down 'hands free' feature [of the Harmar lift],

⁵ A sixth vendor's offer for item 8 was rejected without further consideration after its lift received a rating of poor under the safety and stability factor.

which makes the lift easier to use, as well as the better dealer network, would offset paying a higher price.” Id. at 86-87. In other words, the contracting officer determined that the technical advantages associated with the lift offered by Harmar under item 8 were worth a price premium of 35 percent, but that those associated with the lift offered by Freedom Lift under item 2 were not worth a price premium of 30 percent. We do not think that the fact that in one instance the contracting officer concluded that the technical advantages of a higher-rated product were worth a higher price, while in another instance concluding that they were not, demonstrates inconsistent treatment on her part; it simply demonstrates that the tradeoff considerations in the two cases were distinct.

To the extent that the protester is taking issue with the contracting officer’s judgment as to which proposal represented the best value under item 2, the propriety of a price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the selection official’s judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP’s evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Here, while the solicitation provided that non-price factors would be somewhat more important than price in the determination of best value, we think that it was neither unreasonable nor inconsistent with the solicitation for the contracting officer to determine that what she regarded as the slight technical advantage of Freedom Lift’s proposal was not worth a 30 percent increase in price.

The protester further argues that Bruno’s offer for line items 5 and 7 should have been rejected as technically unacceptable because the lift that Bruno proposed in response to both items failed to comply with the requirement for a weight capacity of 350 pounds. In this connection, the protester contends that the lift proposed by Bruno has a rated weight capacity of only 300 pounds when installed in many models of minivan.

As relevant here, the RFP provides as follows:

ITEM 5: Interior Power Operated Lift for Scooters - #Hoist System (Lift installed in bed of pickup truck or interior [of] a van).

The power assisted scooter hoist lift, is suitable for the patient and/or caregiver who cannot independently safely load or unload a scooter.

- Min 85 lbs weight capacity; Max 350 lb weight capacity

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ITEM 7: Interior Power Operated Lift for Power Chairs - # Hoist System (Lift installed in bed of pickup truck or interior [of] a van).

The power assisted wheelchair hoist lift, is suitable for the patient, and/or caregiver who cannot independently safely load or unload a power chair.

- Min 87 lbs weight capacity; Max 350 lb weight capacity

RFP amend. 8, at 5.

The agency maintains that the specifications pertaining to weight capacity required merely that the lift be capable of lifting 350 pounds, not that it be capable of lifting 350 pounds on every vehicle. According to the VA, the product literature that Bruno submitted in connection with line items 5 and 7 demonstrated compliance with this requirement by describing the lift's rated weight capacity as 400 pounds.⁶ The agency contends that its interpretation of the specification is supported by language in the RFP advising that if a vehicle cannot accommodate a lift with a weight capacity of 350 pounds, the lift should not be installed.⁷ The VA further argues that even if it were reasonable to interpret the specification as requiring that the lift be

⁶ We note that Bruno's product literature actually described the rated weight capacity of the lift offered as "400 lbs. (181 kgs.) Rating dependent on vehicle." Agency Report, exhs. 9 and 10.

⁷ The language to which the agency refers is as follows:

1) There have been numerous clarification questions and suggestions concerning weight capacity of the lifts and the required maximum capacity (350 lbs) would violate various guidelines. It is the VA's position that for the following lifts: Rear Exterior & Interior Lifts, maximum weight capacity will stay at 350 lbs. The VA wishes to procure lifts that can be used with all contracted mobility devices. If a vehicle cannot accommodate the 350 lb lift then it should not be installed. For lifts that do not fit into the parameters covered in this contract there is a waiver process. If this maximum violates any known guidelines, put the violation in writing and submit it (via e-mail).

RFP amend. 7, at 2. In our view, this language, while far from clear, appears to reflect the agency's recognition that any particular vehicle owned or used by a particular veteran may not, because of its condition, accommodate a particular lift. Thus, in this limited sense only, the language supports the agency's position that lifts meeting the weight capacity requirements must be capable of installation only in vehicles that can accommodate the lifts.

capable of lifting 350 pounds on every vehicle, Freedom Lift's own descriptive literature failed to demonstrate compliance with such a requirement, and thus the protester suffered no prejudice as a result of any waiver of the requirement by the agency on behalf of Bruno. The agency cites as support for its position an excerpt from Freedom Lift's technical data, which provides that the proposed model "[a]dapt[s] to most mini-vans, full sized vans, SUVs and pick-up trucks." Agency Supplemental Reply at 10. According to the VA, this statement implicitly recognizes that the lift cannot be used in all minivans.

In response, Freedom Lift concedes that its lift is not capable of lifting 350 pounds on every vehicle, but argues that the specification should not be read as imposing such a requirement; rather, the protester maintains, the specification should be read as requiring that the lift be capable of lifting 350 pounds on the majority of vehicles owned by mobility-impaired veterans. The protester contends that its lift meets this standard, whereas Bruno's does not. Freedom Lift argues in this regard that due to its design, Bruno's lift is capable of lifting only 300 pounds in many minivans, which are the preferred vehicle of mobility-impaired veterans.

To the extent that the protester is arguing that the RFP required compliance with the weight capacity specification in the majority of, but not in all, applications, this interpretation simply is not reasonable, given that the solicitation contained no language indicating that compliance was required in the majority—or, in fact, in any specific percentage—of vehicles. Further, while we fail to see how the agency can achieve its stated goal of acquiring "the best lift that would be suitable for the largest number of veterans," Declaration of the Technical Panel Chairperson at 2, without making any attempt to assess the percentage of veteran vehicles in which a proposed lift would be capable of achieving the agency's stated minimum requirement pertaining to weight capacity, the fact is that the RFP failed to provide for the evaluation of proposals on that basis. Accordingly, given that the RFP in effect was silent as to the conditions under which weight capacity was to be assessed—*i.e.*, the RFP set out no parameters for measuring compliance with the weight capacity requirements—we cannot say that it was unreasonable for the agency to conclude that Bruno's (as well as the protester's) proposed lifts meet the specifications at issue, although neither company's products apparently are suitable for all types of vehicles used by mobility-impaired veterans.

The protest is denied.

Gary L. Kepplinger
General Counsel