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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Utility Tool & Trailer, Inc.

File: B-310535

Date: January 3, 2008

Joe Weiland, Utility Tool & Trailer, Inc., for the protester.

Jeffrey I. Kessler, Esq., and Christopher Van der Waerden, Esq., U.S. Army Materiel Command, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's selection of an offeror with lower-rated delivery schedule and lower-priced proposal is denied where the agency reasonably decided that the price premium involved in selecting the protester's higher-priced proposal to obtain the benefit of that proposal's slightly more favorable delivery schedule was not justified.

DECISION

Utility Tool & Trailer, Inc. (UTT) protests the award of a requirements-type contract to Schutt Industries, Inc. under request for proposals (RFP) No. W56HZV-07-R-G094, issued by the United States Army Tank-Automotive and Armaments Command (TACOM) for 5-ton dual axle trailers. UTT argues that the agency abandoned the stated evaluation criteria (and made an unreasonable best value decision) when it failed to select UTT's higher-priced proposal offering shorter delivery times and applied unreasonable calculations for freight costs to portions of its proposals.

We deny the protest.

BACKGROUND

The RFP, issued on April 13, 2007, provided for the award of a 3-year requirements contract for delivery of 5-ton dual-axle trailers for use in Iraq and Afghanistan, and for potential foreign military sales. The RFP included an estimated first-year quantity of 75 trailers destined for Afghanistan (to be priced FOB Origin) and 6 trailers destined for Iraq (to be priced FOB Destination). The RFP also included an

estimated second-year quantity of 33 trailers (FOB Origin) and 6 trailers (FOB Destination), and an estimated third-year quantity of 11 trailers (FOB Origin) and 6 trailers (FOB Destination).

The RFP provided for a two-phased evaluation process. Under phase I, proposals were to be evaluated as either acceptable, or not acceptable, based on the proposal's compliance with the terms of the RFP. An acceptable proposal was defined as one "where there is essentially no doubt" that the offered trailers would "meet each of the specification requirements." RFP at 73.

Under phase II, the proposals found to be acceptable were to be evaluated using a tradeoff procedure considering the evaluation factors of delivery, small business participation and price. The RFP explained that the delivery factor would be more important than price, and price would be more important than small business participation. RFP at 74.

With respect to the delivery factor, the RFP provided that the agency would evaluate on the basis of the offeror's proposed Days After Receipt of Order (DARO) for deliveries FOB Origin, and the proposed DARO for deliveries FOB Destination (to Umm Qasr, Iraq). The evaluation of the delivery factor was limited to an analysis of the government's total estimated initial order of 81 trailers (75 of which were FOB Origin, for use in Afghanistan, and 6 of which were FOB Destination, for use in Iraq). RFP at 74. The RFP further stated that the delivery evaluation would assess the extent to which the deliveries would satisfy the RFP's objective delivery schedules for FOB Origin and FOB Destination (which were set forth in the RFP at 74), as well as the level of risk associated with the proposed delivery schedule.

Under the guaranteed shipping characteristics, offerors were required to provide, among other things, the size and weight of shipping containers and the size and type of shipping trailers. RFP ¶ K.2. The RFP provided that the total evaluated price would include the sum of all the hardware (and miscellaneous parts) identified in section B of the RFP, and transportation costs, as determined by the TACOM Transportation Office, for all FOB Origin items. RFP ¶ M.2.2.3. The RFP also included a detailed explanation of the way in which it would calculate the transportation costs for FOB Origin items. RFP at 72-73.

Five proposals were received, including those from UTT and Schutt, by the closing date for receipt of proposals. After initial review of the proposals, two proposals were eliminated from the competitive range based on unreasonably high prices. Discussions were held with the remaining three offerors, including UTT and Schutt and final proposals revisions were received and evaluated. UTT's and Schutt's final revised proposals were evaluated under phase II as follows:

Offeror (with delivery terms offered in DARO)	Delivery Rating/Risk	Price + Transp. Cost Total Eval. Cost	Small Business Participation
Schutt 140 days-FOB Origin 230 days-FOB Destination	Good/ Low Risk	\$2,166,602 +190,339 \$2,356,941	Good
UTT 140 days-FOB Origin 210 days-FOB Destination	Good/ Low Risk	\$2,207,819 + 361,868 \$2,569,687	Good

Agency Report (AR), Tab 17, Source Selection Decision, at 3.

Schutt's total evaluated price was \$212,746 lower than UTT's evaluated price. While Schutt and UTT offered the same delivery schedule for the 75 FOB Origin trailers, the source selection authority (SSA) recognized that UTT was offering a slightly better delivery schedule for the 6 FOB Destination trailers than Schutt, but nonetheless concluded that the Schutt proposal was the most advantageous because of its lower price. In the SSA's view, it was not worth paying the significant premium (when calculated per vehicle) for the 20-day delivery advantage offered by UTT for the six FOB Destination trailers. *Id.* at 4. Award was made to Schutt and this protest followed.

DISCUSSION

As mentioned above, UTT argues that the agency abandoned the stated evaluation criteria (and made an unreasonable best value decision) when it failed to select UTT's higher-priced proposal offering shorter delivery times and applied unreasonable calculations for freight costs to portions of its proposal.¹

In the agency report, the Army addresses these issues and, for the most part, UTT does not rebut the Army's analysis, or offer any explanation about why the Army's answers are unreasonable. Instead, UTT simply affirms its initial protest--essentially asking that our Office decide the protest issues based on the record as it stands--and reiterates its initially stated concerns--that the solicitation here should not have included both FOB Origin and FOB Destination approaches to shipping costs.

¹ UTT's contention that the RFP should have required only FOB Origin pricing--a contention which constitutes much of UTT's comments filing--is untimely at this juncture. This argument involves a solicitation impropriety that should have been raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2007).

With respect to UTT's challenge to the SSA's tradeoff decision, we think selection officials have considerable discretion in making price/technical tradeoffs. Their judgments in these tradeoffs are by their nature subjective; nevertheless, the exercise of these judgments must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Award may be made to a firm that submitted a lower-rated, lower-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the premium involved in awarding to the offeror with the higher-rated, higher-priced proposal is not justified. Computer Tech. Servs., Inc., B-271435, June 20, 1996, 96-1 CPD ¶ 283 at 5.

Here, the SSA recognized UTT's slight delivery advantage with respect to the six FOB Destination trailers and concluded that the advantage was not worth the price premium. In making this decision, the SSA appropriately recognized the relative importance of the solicitation's evaluation factors, in particular that the delivery factor was more important than the price factor. AR, Tab 17, Source Selection Decision at 4. Although UTT believes that its shorter delivery schedule for the six FOB Destination trailers should have resulted in an award to UTT, the protester's disagreement with the SSA's business judgment does not show that that judgment is unreasonable. See ACS State Healthcare, LLC et al., B-292981 et al., Jan. 9, 2004, 2004 CPD ¶ 57 at 44. Rather, we find that the decision reflects a price/technical tradeoff assessment that is within the realm of discretion given selection officials on these matters.²

With respect to the evaluation of transportation costs, the analysis was consistent with the approach stated in the solicitation. In essence, the Army explained that the differing shipping costs applied to the items provided by UTT and Schutt--despite the close proximity of their locations--is due to the different approaches the two companies have taken to packaging their items for shipment. Given this explanation,

² UTT, in its comments to the agency report, also argues that Schutt should not have been included in the phase II tradeoff decision because Schutt allegedly had previous performance issues. As a preliminary matter, we note that an assessment of past performance was not part of the initial phase I determination of an offeror's acceptability. Instead, past performance was part of the phase II delivery evaluation. In this regard, the RFP stated that the government would assess the offeror's delivery risk by reviewing, among other things, timeliness on prior efforts. RFP at 74. In rating Schutt "good/low risk" under the delivery factor, the agency specifically noted that Schutt had a history of satisfactory performance on previous TACOM contracts. AR, Tab 14, Delivery Area Evaluation, at 2. We have no basis to question the reasonableness of the agency's determination in this regard. We also note that UTT offers no evidence regarding why its performance challenge--which was not based on information provided in the agency's report--was timely when first raised in its comments. See 4 C.F.R. § 21.2(a)(2).

which appears reasonable, and given UTT's failure to offer any analysis about why the Army's explanation is flawed, we have no basis to reach a different conclusion.

The protest is denied.

Gary L. Kepplinger
General Counsel