



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: National Aerospace Group, Inc.

File: B-281958; B-281959

Date: May 10, 1999

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.

Mike Friedman for Airport Metals, an intervenor.

Lillian Weiss, Esq., Defense Logistics Agency, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Placement of an order at a significant price premium for the sole reason that the vendor quoting a lower price has no prior performance history in supplying the item being procured was unreasonable, where determination was not made in accordance with the stated evaluation scheme.

DECISION

National Aerospace Group, Inc. protests the issuance of purchase orders for sheet metal to other firms under request for quotations (RFQ) Nos. SPO500-99-T-A426 (RFQ-A426) and SPO540-99-Q-A152 (RFQ-A152) by the Defense Logistics Agency (DLA), Defense Industrial Supply Center (DISC). National argues that its quotations represented the best value under these two RFQs.

We sustain National's protest of the order under RFQ-A426, and deny National's protest under RFQ-A152.

RFQ-A426 was a simplified acquisition using the agency's automated purchase procedures. Under these procedures, RFQs are transmitted directly to an electronic bulletin board (EBB) maintained by the agency. Firms desiring access to the EBB to review the RFQs and to submit quotations are required to first register with the agency by completing a small purchase agreement (SPA). Once registered, vendors can then access the EBB either through a service or using their own personal computers via the Internet. Contracting Officer's Statement at 1; see Commonwealth Indus. Specialties, Inc., B-277833, Nov. 25, 1997, 97-2 CPD ¶ 151 at 2-3; Arcy Mfg. Co., Inc.; Beard Servs., Inc.; Keys Wholesale, Inc.; Craftmaster Hardware Co., Inc., B-261538 et al., Aug. 14, 1995, 95-2 CPD ¶ 283 at 1-2. The SPA, which every

supplier must sign in order to obtain a password to submit quotations on the EBB, and which was applicable to this RFQ, provides as follows:

DISC purchases at or below the SAT [simplified acquisition threshold] are subject to Best Value Buying techniques. This includes, but is not limited to, the Blue Chip Vendor Program, the Delivery Evaluation Factor Program, and Contracting Officer's individual determinations based on a comparative assessment of pertinent circumstances, including past performance, delivery and product quality.

DISC Small Purchase Agreement, Modification, at 2nd unnumbered page.

RFQ-A426 sought prices for metal sheets with a specified dimension for delivery within 120 days after the date of order. Contracting Officer's Statement at 2. The agency received four acceptable quotations in response to RFQ-A426. National submitted the low quotation at a price of \$10,500, with delivery within 45 days from the date of the order. Tara Metals submitted a quotation of \$13,083 with delivery within 70 days from the date of order. Agency Report, Tab 4, EBB Quotation Abstract for RFQ-A426. The agency evaluated vendors under the Automated Best Value Model (ABVM). Contracting Officer's Statement at 2. ABVM is an automated system that collects a vendor's past performance data for a specific period and translates it into a numeric score. Tara had an ABVM score of 95.4. National, which was a relatively new supplier, was given a rating of 999.9 because it lacked a performance history for this item. *Id.*; Agency Report, Tab 6, ABVM Rating Printout. Under the ABVM procedures, a supplier with no performance history is assigned a rating of 999.9, which is referred to in the record as a neutral rating. Contracting Officer's Statement at 2.

The record also includes a facsimile sent at 9:15 a.m. on January 20, 1999 from National responding to an inquiry from the agency in which National advised the agency that the "material quoted as called out . . . no exceptions We have in stock." Protest, exh. 3. The award justification document, signed and dated on January 20, 1999, was a preprinted form, which permitted the contracting officer to select one of a variety of reasons for the award. Here, in pertinent part, the contracting officer completed the form as follows: "Lower priced offer(s) not selected because: . . . Other score(s) not a true indicator of performance because score(s) based on too few contract line items." Agency Report, Tab 7, Award Justification.

There is no other contemporaneous award documentation. In her statement to our Office in the agency report, the contracting officer states that, "[e]ssentially, [she] determined that Tara, who had a composite ABVM score of 95.4 represented a lesser risk of nonperformance than did [National] who had a neutral rating of 999.9 because it is a relatively new supplier." Contracting Officer's Statement at 2.

National argues that the award to Tara was unreasonable and not supported by the record. National points out that its quotation was significantly less expensive than Tara's; that it quoted a shorter delivery time than Tara; and that in response to the agency's apparent concern about its capability to supply the item, it confirmed that it could furnish the item. National argues that it was improperly penalized without any justification for a lack of previous performance history. National asserts that the agency's selection decision violates the ABVM notice provision which provides, in pertinent part, that "[a]n ABVM score does not determine an offeror's award eligibility, or technical acceptability," and that "[n]ew offeror status will not be grounds for disqualification for award." Protester's Comments, attach., DISC clause 52.215-9112(e).

Simplified acquisition procedures are designed to, among other things, reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Federal Acquisition Regulation (FAR) § 13.002. Although the procedures for simplified acquisitions do not require detailed justifications supporting a best value determination, the FAR requires that the contracting officer evaluate quotations "on the basis established in the solicitation" and support "the award decision if other than price-related factors were considered in selecting the supplier." FAR §§ 13.106-2(a)(2), 13.106-3(b)(3)(ii). Thus, even when using such procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. See Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3; Nunez & Assocs., B-258666, Feb. 10, 1995, 95-1 CPD ¶ 62 at 2. In reviewing protests against an allegedly improper simplified acquisition evaluation and selection decision, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Id. Here, we conclude that the selection decision was flawed because it is inadequately supported and was not based on the criteria announced in the SPA.

The SPA, which established the terms and conditions for this EBB acquisition, stated that the contracting officer would use best value techniques and make an individual determination based on a comparative assessment of pertinent circumstances, including past performance, delivery and product quality. The contracting officer states that she used the ABVM to perform this comparative assessment. Contracting Officer's Statement at 1, 4. As quoted above, the sole reason for paying a significant price premium for Tara was that National's ABVM score was not a true indicator of past performance because it was based on too few contract lines. Agency Report, Tab 7, Award Justification.

In a recent case involving DLA's use of ABVM scoring, we concluded that the use of a neutral rating approach to avoid penalizing a vendor without prior experience does not preclude a determination to award to a higher-priced firm with a good past performance record over a lower priced vendor with a neutral past performance rating. Indeed, such a determination is inherent in the concept of best value. Phillips

Indus., Inc., B-280645, Sept. 17, 1998, 98-2 CPD ¶ 74 at 5. In Phillips, the contracting officer's determination to select a higher priced vendor with an excellent ABVM score, rather than a new supplier with a neutral rating, was reasonable where the record in that case showed that the agency had backorders for the item and timely delivery was critical. Nonetheless, we expressed concern that the vendor without a performance history not be disqualified from award merely because it lacked a performance history; we pointed out that such an approach would be inconsistent with the FAR and the DLA ABVM clause. Id. As DLA recognized in that case, FAR § 15.305(a)(2) provides that in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance. See 41 U.S.C. § 405(j)(2) (1994). The ABVM clause states that lack of performance history is not grounds for disqualification for award. Protester's Comments, attach., DISC clause 52.215-9112(e).

There is nothing in the record to show that the contracting officer performed a comparative assessment of the vendors. The contracting officer merely checked a box on a form indicating that National was not selected because its 999.9 ABVM score was based on insufficient information and, therefore, was not a true indicator of its capabilities. Nor is there any indication that the contracting officer performed a tradeoff that considered the significant price premium in ordering from Tara, or that the contracting officer considered in her decision that National quoted a significantly shorter delivery time and confirmed that the metal sheets were in stock. Unlike in Phillips, there is no indication here that the item was in backlog or high demand status or that timely delivery was critical and worth the price premium to avoid the risk of using a vendor with no performance history. We conclude that the contracting officer failed to make a meaningful best value determination consistent with the SPA to justify paying a significant premium to Tara. As a result, DLA's decision was tantamount to rejecting National's quotation based on its lack of past performance history, which is inconsistent with 41 U.S.C. § 405(j)(2), FAR § 15.305(a)(2), and the clauses which implement the ABVM program, as discussed in the Phillips decision. We therefore sustain National's protest of the order to Tara under RFQ-A426.

We deny National's protest of the order to Airport Metals under RFQ-A152. Airport Metals was the low priced vendor, had a ABVM score of 98.4, and quoted a significantly shorter delivery time than National. Agency Report, Tab 9, RFQ-A152 Abstract. We think the contracting officer's selection of Airport Metals in these circumstances was amply justified. Although National challenges Airport Metals' ABVM score, we have no basis to question the score on this record. For RFQ-A426, we recommend that the contracting officer perform a proper best value determination consistent with this decision, and issue an order appropriate with that best value determination. In any event, National should be reimbursed the costs of filing and pursuing its protest of RFQ-A426, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1998). National should submit its certified claim,

detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest regarding RFQ-A426 is sustained; the protest regarding RFQ-A152 is denied.

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