



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: USA Electronics

File: B-275389

Date: February 14, 1997

Paul D. Anderson, for the protester.

Benjamin G. Perkins, Esq., Defense Logistics Agency, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency selection of higher-priced offeror with a better delivery performance record instead of a lower-priced offeror, whose performance reflected delivery delinquencies, was reasonable and consistent with solicitation's evaluation scheme, which weighed past performance and price equally, where there was a low inventory of the solicited item and the agency reasonably concluded that the awardee's better performance record indicated a lower delivery risk.

DECISION

USA Electronics protests the award of a contract to Revere Electric Supply Co. under request for proposals (RFP) No. SP0430-96-R-2603, issued by the Defense Supply Center Richmond (DSCR), Defense Logistics Agency, for up to 2,000 power inverters.

We deny the protest.

The RFP, issued on August 6, 1996, contemplated a best value award based upon a comparative assessment of prices and past performance, which were equally weighted. Award was to be made to the offeror with the lowest price and best past performance score unless the offeror with the best performance history did not offer the lowest price, in which case the government would determine the appropriate tradeoff of price for past performance. Among other things, the RFP stated that delivery schedule/inventory status and historical delivery/quality problems could affect the tradeoff determination.

The RFP included a clause advising offerors that past performance would be evaluated based upon an automated best value model (ABVM) score, which was to be calculated for each DSCR vendor on a monthly basis. The clause stated that the monthly ABVM score would be made available to each vendor on the electronic

bulletin board (EBB) by the 15th day of the month, and provided that vendors could challenge the score at any time, but preferably before the next monthly scores were posted; vendors wanting to challenge their scores were encouraged to do so in a timely manner because award decisions would be based on the posted ABVM scores.

The ABVM score is the average of the vendor's delivery score and quality score. The delivery score is based on the vendor's delivery record during the 12-month period ending 60 days prior to the date the score is posted; items not shipped by the contract delivery date are considered delinquent for purposes of scoring delivery performance. The quality score is determined from validated contractor caused nonconformances during the 12-month period ending 30 days prior to the date of the score is posted.

Seven proposals were received in response to the RFP. USA submitted the lowest-priced offer of \$352,000, and received a revised ABVM score of 71.3, which was based on a delivery score of 42.6 and a quality score of 100.¹ Revere submitted the next lowest-priced offer of \$355,000, with the highest ABVM score of 100 based upon perfect scores for delivery and quality performance. DSCR determined that Revere's proposal represented the best value because its superior past performance, which indicated a lower delivery risk, offset the minimal (less than 1 percent) price difference between USA's and Revere's offers.² In making this decision, the agency considered that there were back orders for this item so that timely delivery was of concern. Award was made to Revere on October 16.

The record shows that USA first became cognizant of its ABVM score when it was apprised of the award. In response to USA's request, it was provided the basis for this score. USA's protest to our Office followed.

In its initial protest, USA challenged its ABVM delivery score, asserting reasons why it should not have been determined delinquent on the delivery orders considered. In its report, the agency revised USA's score, conceding that USA was not delinquent on a delivery order, and rebutted USA's other challenges to the ABVM score. While USA still generally complains about its score, its only specific response to the agency's explanation concerns USA's delinquencies on orders

¹The agency initially calculated USA's ABVM score to be 63, which was based on a delivery score of 26. The agency revised the delivery score to 42.6 following the protest because it had failed to credit USA for timely delivery under a delivery order during the relevant period.

²In its protest report, the agency made another price/past performance tradeoff considering USA's revised ABVM score and determined that it would be the same.

assertedly in excess of the maximum order limitation of the relevant contract; however, USA does not deny its delinquencies on these orders that it accepted.³ Based on the record, we cannot say that USA's revised ABVM score of 71.3 was unwarranted.⁴

USA protests the award selection, arguing that the agency did not adequately consider USA's low price and acceptable delivery record.

In a best value procurement, price is not necessarily controlling in determining the offer that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the RFP, with the source selection official often required to make a cost/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost that may be associated with that proposal. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the RFP evaluation scheme. Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13; Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151. Thus, where, as here, an RFP identifies past performance and price as the evaluation criteria and indicates that an offeror with good past performance can expect a higher rating than an offeror without such a record of performance, proposals must be evaluated on that basis, and ultimately the selection official must decide whether or not a higher-priced offeror with a better past performance rating represents the best value to the government. Excalibur Sys., Inc., *supra*.

³In its comments, USA asserts that two other deliveries not mentioned in its initial protest should have been considered in the ABVM score. This contention is untimely and not for consideration because it was first stated more than 10 days after USA knew, or should have known, its basis for protest; here, USA knew what deliveries were included in the ABVM score when it filed its initial protest. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)).

⁴As set forth in the ABVM clause, vendors have ready access via the EBB to their ABVM scores, and the components thereof, and have the opportunity to request correction of the scores. In appropriate circumstances, it may be found that a vendor, who did not access or challenge this data until after it was not selected for award, did not diligently pursue the information on which it bases a protest of the ABVM score. See generally Automated Medical Prods. Corp., B-275835, Feb. 3, 1997, 97-1 CPD ¶ ____.

Here, the RFP expressly advised offerors how ABVM scores would be considered in making award selections.⁵ While USA asserts that any low-priced offeror with an ABVM score between 70 and 100 should be selected because this score evidences an acceptable delivery record, the ABVM clause did not provide this basis for award, but stated that credit would be given to offerors with higher ABVM scores.

As indicated above, DSCR found the minimally higher price associated with the selection of Revere's proposal for award was justified, given Revere's perfect delivery score based on no late deliveries in the relevant period, which reasonably gave the agency greater confidence that Revere would make timely deliveries; USA's recent history of delinquent deliveries; and the low quantity of power inverters in the agency's inventory (137 back orders). Under the circumstances, we find the agency's award selection reasonable and consistent with the RFP. H.F. Henderson Indus., B-275017, Jan. 17, 1997, 97-1 CPD ¶ 27.

The protest is denied.⁶

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⁵To the extent USA contends that the best value evaluation scheme set forth in the RFP is improper, this constitutes an untimely protest of an alleged impropriety in a solicitation apparent prior to the time set for receipt of proposals, which was required to be protested before that time. Bid Protest Regulations, § 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)).

⁶USA also protests that Revere did not complete the RFP's request for information regarding whether it was furnishing other than duty-free supplies. This is immaterial because Revere, if required, must pay duty and offers were evaluated on a duty-included basis; Revere's failure to provide this information did not affect its legal obligations or its contract price. See Tektronix, Inc., B-207475.3, Nov. 17, 1982, 82-2 CPD ¶ 452.