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Decision

Matter of: Pride Mobility Products Corporation

File: B-292822.5

Date: December 6, 2004

Stephen M. Azia, Esq., Eastwood & Azia, for the protester.
Edward O. Patton, Esq., Mansour, Gavin, Gerlack & Manos, for Invacare Corporation, an intervenor.
Barbara J. Stuetzer, Esq., Department of Veterans Affairs, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency determination that awardee's proposed wheelchair was superior to protester's is denied where the determination was reasonably based on a demonstration of the wheelchairs, as provided for by the solicitation, which showed that the awardee's wheelchair was superior in both indoor and outdoor environments.

DECISION

Pride Mobility Products Corporation protests the Department of Veterans Affairs' award of a contract to Invacare Corporation under request for proposals (RFP) No. RFP-797-NC-03-0028, for standard-size, power-based wheelchairs. Pride challenges the evaluation of proposals.

We deny the protest.

The RFP provided for award of one or more fixed-price indefinite-delivery/indefinite-quantity contracts—with a 1-year base period and four 1-year options—for 4 items or award groups, including: integral seat power wheelchairs, light duty (group 1); integral seat power wheelchairs, moderate duty (group 2); power-based wheelchairs, small size (group 3); and power-based wheelchairs, standard size (group 4), the only group in issue here. The RFP included detailed specifications, setting forth both dimensions and minimum performance capabilities, and required the submission of sample wheelchairs for purposes of demonstrating conformance to the specifications and the performance of the wheelchairs.

Award was to be made to the responsible offeror(s) whose conforming proposal(s) would be most advantageous to the government—that is, on a “best value” basis—considering four factors (in descending order of importance): (1) technical, including subfactors (in descending order of importance) for performance, required options, American National Standards Institute/Rehabilitation Engineering and Assistive Technology Society of North America (ANSI/RESNA) test results and overall suitability for VA patients; (2) price, (3) quality/past performance, and (4) small disadvantaged business (SDB) participation. The RFP provided for the sample wheelchairs to be evaluated under the technical factors, but also provided that the evaluation was not limited to these factors, and reserved the right for VA “to inspect any aspect of the wheelchairs.” RFP at 36. Further, the RFP provided that “[s]ignificant weight will be given to the overall performance of the power wheelchairs during” the demonstration. *Id.* For purposes of determining the most advantageous offer, the technical factor was slightly more important than price, and quality/past performance and SDB participation combined were significantly less important than price.

Ten proposals from seven offerors were received by the closing time. After conducting discussions with the offerors and twice requesting revised proposals, VA determined that the proposal submitted by Sunrise Medical HHG, Inc. was most advantageous. Pride and another firm challenged the ensuing award to Sunrise in protests filed in our Office, in response to which, VA proposed corrective action. Thereafter, VA issued amendment No. 6, requesting that offerors resubmit three sample wheelchairs, including one programmed for indoor use and another programmed for outdoor use. Offerors were advised by the amendment, as they had been in the original solicitation, that the wheelchairs would be tested for “[p]erformance (including but not limited to the outdoor factors of ease of use, maneuverability, inclines, obliques, comfort of ride, grass, mud, sand, gravel, speed, and programmability; and indoor factors of turning radius, braking distance, durability).” Amend. 6. No price revisions were allowed.

Based on the reevaluation, VA determined that Invacare’s proposal of the [DELETED] wheelchair was the most advantageous offer. Specifically, while Invacare’s price (\$[DELETED]) for the [DELETED] was [DELETED] higher than Pride’s (\$[DELETED]) for its model [DELETED], and both offerors were rated exceptional for past performance, Invacare’s [DELETED] received a technical rating of very good and its proposal received an acceptable SDB utilization rating, while Pride’s model [DELETED] received only an acceptable technical rating and its proposal received a poor SDB utilization rating.¹ VA concluded that Invacare’s wheelchair was “far superior” to Pride’s and that the technical superiority of

¹ Although Pride also resubmitted samples for a second wheelchair, its protest concerns only the evaluation of its model [DELETED].

Invacare's proposal offset its higher price. Upon learning of the resulting award to Invacare, Pride filed this protest with our Office.

Pride challenges VA's determination that Invacare's [DELETED] wheelchair was technically superior to Pride's model [DELETED]. According to the protester, the ratings for the indoor performance of its model [DELETED] were comparable to those of Invacare's [DELETED]. As for the outdoor performance evaluation, Pride asserts that the test was based on circumstances that a user would not normally encounter, and that the results therefore did not warrant paying Invacare's higher price.

Where a proposal evaluation is challenged, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 6.

Here, VA rated Invacare's [DELETED] wheelchair very good and Pride's model [DELETED] only acceptable for overall indoor and outdoor performance. We conclude that the evaluation in this regard was reasonable.

First, contrary to Pride's assertion that its model [DELETED] was comparable to the [DELETED] in the indoor evaluation, the record shows that this was not the case. In this regard, with respect to the three indoor performance categories, the [DELETED] was evaluated as superior for turning radius and maneuverability (very good versus good), while Pride's model [DELETED] was evaluated as superior only for braking distance (very good versus acceptable). In particular, VA's evaluation panel reported that it was impressed by the [DELETED]'s ease of use, range of speed (with good adjustability at slow speeds), tight turning radius, and ability to maneuver well through an obstacle course simulating narrow hallways and bathrooms. The panel concluded that these capabilities would result in high veteran satisfaction and safety, with a low incidence of bumping into walls and other obstacles. In contrast, while Pride's model [DELETED] was found to demonstrate a shorter, and thus superior, braking distance, the panel determined that the model [DELETED] was less advantageous in indoor environments because it was difficult to control (in part because of the wide positioning of the rear casters), difficult to back up, and was a "little jerky stopping and starting." Technical Evaluation, Pride [DELETED] Wheelchair, at 2. According to the panel, the design of the model [DELETED] did not encourage an intuitive sense of the posterior boundaries of the chair, with the likely result that there would be a higher than normal incidence of damage to veterans' homes, and less than desired veteran safety and satisfaction. The panel concluded that while the [DELETED] was "an easy to control indoor power chair," the model [DELETED] was a "weak performer" indoors.

Technical Evaluation, [DELETED] Wheelchair, at 7; Technical Evaluation, Pride [DELETED] Wheelchair, at 6. The protester has provided no basis for questioning the agency's conclusion that Invacare's [DELETED] was superior overall in indoor performance.²

As for the eight outdoor performance categories, while Pride's model [DELETED] was evaluated as superior under none of the categories, the [DELETED] was evaluated as demonstrating superior performance under five of these categories (inclines/obliques, grass, gravel incline, speed and durability), including two under which it was rated significantly higher than Pride's model [DELETED] (very good versus fair for inclines/obliques, and very good versus acceptable for gravel incline). In particular, the evaluation panel found that the [DELETED] was a powerful wheelchair adept at traversing grassy environments, slopes and gravel inclines, such that it could be expected to meet all reasonable environmental challenges veterans may encounter (as well as many unreasonable ones). In contrast, the evaluation panel reported that the model [DELETED] "had significant flaws outdoors," including having been difficult to turn in high grass, veered to the right when climbing a gravel slope, and gotten stuck several times on moderate grassy inclines. Technical Evaluation, Pride [DELETED] Wheelchair, at 6. VA concluded that the model [DELETED]'s performance problems would result in inconvenience to, and unacceptable safety risks for, veterans.

While Pride challenges the agency's approach to evaluating outdoor performance, we find no basis to question the agency's consideration of the respective capabilities of the wheelchairs in this environment. Again, the original solicitation and amendment No. 6 both advised that the agency would evaluate the samples for "[p]erformance (including but not limited to the outdoor factors of ease of use, maneuverability, inclines, obliques, comfort of ride, grass, mud, gravel, speed, and programmability . . .)." RFP at 36; amend. 6. While the agency recognized that it was testing the wheelchairs in environments that were more challenging than a user would normally encounter—such as grassy, slopes, sand, and gravel inclines—it did so in order to "be sure that if a veteran were to encounter an unusual situation, such as a mud puddle, the veteran would be less likely to get trapped . . ." Price Negotiation

² Pride points out that Invacare's [DELETED] wheelchair received only an acceptable rating for braking distance, with the evaluation panel noting that its long stopping distance "[m]ay present a safety hazard, if not programmed slower for the less adept veteran." Technical Evaluation, [DELETED], at 2. As noted by VA, however, the longer braking distance was attributed by the panel to the [DELETED]'s high speed setting, which the panel recognized could be remedied by programming the wheelchair for a slower setting. There is no basis for finding that this single concern undermines the reasonableness of the agency's determination that the [DELETED] was superior overall under the indoor evaluation.

Memorandum at 7. We find the agency's evaluation approach in this regard to be both reasonable and consistent with the evaluation approach as set forth in the RFP.

Pride also asserts that award to Invacare was improper because award was made after the end of the period for the acceptance of offers as established by amendment No. 6. However, it is not improper for an agency to accept an expired offer where, as here, acceptance is not prejudicial to the competitive system. See BioGenesis Pacific, Inc., B-283738, Dec. 14, 1999, 99-2 CPD ¶ 109 at 6; CDA Inv. Techs., Inc.--Recon., B-272093.3, Mar. 11, 1997, 97-1 CPD ¶ 103 at 8. Acceptance of Invacare's expired offer did not prejudice the competitive system since nothing in the record indicates that Invacare sought or obtained an unfair competitive advantage. Specifically, Invacare offered the required acceptance period, and at no time refused to extend its offer for an additional period. See Krug Life Sciences, Inc., B-258669, B-258669.2, Feb. 22, 1995, 95-1 CPD ¶ 111 at 3; The Fletcher Constr. Co., Ltd., B-248977, Oct. 15, 1992, 92-2 CPD ¶ 246 at 5-6.

Pride questions the integrity of the procurement, noting that the contracting officer, in response to an earlier Pride protest of the solicitation terms, encouraged Pride to withdraw its protest. Pride points out in this regard that VA has previously acknowledged that, while the agency's review of the matter found no evidence that the contracting officer had intimidated Pride, it was inappropriate, and inconsistent with VA policy, for the contracting officer to contact Pride once a protest had been filed. This argument provides no basis for sustaining the protest. Government officials are presumed to act in good faith, and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ __ at 4; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD 154 at 5 n.6. The mere fact that the contracting officer sought to persuade Pride to withdraw its initial protest does not demonstrate that the subsequent evaluation was motivated by bias or bad faith, and Pride has presented no other evidence that this was the case.

The protest is denied.

Anthony H. Gamboa
General Counsel