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**United States Government Accountability Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Midland Supply, Inc.

**File:** B-298720; B-298720.2

**Date:** November 29, 2006

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Richard D. Lieberman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, P.C., for the protester.

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Linda S. Lebowitz, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Under solicitation providing for award to offeror whose proposal is found to be the most advantageous to the government based on past performance, delivery, and price, selection of lower technically rated, lower-priced proposal is improper where the record shows that selection decision was based on a mechanical comparison of offerors' total point scores and lacks any documentation indicating that a price/technical tradeoff was made.

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### **DECISION**

Midland Supply, Inc. protests the award of a contract to Danaher Tool Group under solicitation No. 6FLS-G3-050327-N, issued by the General Services Administration for quantities of 50 commercial line items in the 5120 Federal Supply Class (handtools, non-edged, non-powered). Midland challenges the agency's award for line item No. 1 for socket wrench sets (an item Midland has provided to the government since 2001) to Danaher, a firm submitting a lower technically rated, lower-priced proposal for this line item.

We sustain the protest.

The solicitation, issued on February 24, 2006, contemplated awards of fixed-price requirements contracts for a 2-year base period with three 1-year option periods. The solicitation included the clause at Federal Acquisition Regulation (FAR) § 52.212-2, captioned "Evaluation--Commercial Items," which provided that the agency would award contracts to the responsible offerors whose proposals, conforming to the solicitation, were determined to be most advantageous to the government, past performance, delivery, and price considered. (The past

performance evaluation factor had three subfactors--on-time delivery, quality deficiency notices, and orders terminated.) The solicitation stated that past performance and delivery, when combined, would be considered significantly more important than price. The solicitation also stated that if proposals were determined to be essentially technically equal, awards would be made to the firms submitting the lowest prices.

With respect to the time of delivery, the solicitation required that delivery be made "within 120 calendar days after receipt of order for all items." Solicitation at 99. The solicitation also permitted an offeror to propose for evaluation an alternate, more favorable delivery time by inserting in its proposal a specific number of calendar days for delivery after receipt of order for all items. Id.

In evaluating proposals, the agency assigned the following raw points under the three evaluation factors: excellent (5 points); good (4 points); average (3 points); and poor (0 points). These raw scores were then multiplied by the following weights: 35 percent for both past performance and delivery (for a total combined weight of 70 percent) and 30 percent for price.<sup>1</sup> The agency then added the weighted scores together to arrive at a total point score for each proposal.

In evaluating Midland's past performance, the agency assigned it a raw score of 3 points under the on-time delivery subfactor based on Midland's [deleted]-percent on-time delivery record. Because Midland had no quality deficiency notices and no terminated orders, the agency assigned it a raw score of 5 points under each of the other two past performance subfactors. The agency averaged these scores, for a final past performance raw score of 4.34 points. Because Midland proposed a [deleted]-day delivery schedule, the agency assigned it the highest raw score of 5 points under the delivery factor.<sup>2</sup> Midland's price for line item No. 1--\$[deleted] per item--received a raw score of 3 points.<sup>3</sup> Contracting Officer's (CO) Statement,

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<sup>1</sup> To the extent that Midland complains that the past performance and delivery evaluation factors were each weighted only 5 percent more than price even though the solicitation provided that a premium would be placed on these technical evaluation factors in relation to price, we point out that, in accordance with the terms of the solicitation, the combination of the two technical evaluation factors, each weighted at 35 percent--for a total combined weight of 70 percent--was significantly more important than price, which had a total weight of 30 percent.

<sup>2</sup> With respect to the delivery evaluation factor, the agency conducted a market survey in October 2005, in which nine firms, including Midland and Danaher, participated. Eight of the firms, including Midland, responded that delivery could be accomplished in 60 days. Based on the results of the market survey, the agency used 60 days as the lowest projected delivery timeframe. As a result, the agency determined that proposed delivery schedules of 60 days or less would be evaluated  
(continued...)

Sept. 26, 2006, at 4. (Midland's price was approximately [deleted] percent higher than Danaher's price.)

In evaluating Danaher's past performance, the agency assigned it a raw score of 3 points under the on-time delivery subfactor based on Danaher's [deleted]-percent on-time delivery record. Because Danaher had no quality deficiency notices and no terminated orders, the agency assigned it a raw score of 5 points under each of the other two past performance subfactors. The agency averaged these scores, for a final past performance raw score of 4.34 points, the same as Midland's. Because Danaher proposed an [deleted]-day delivery schedule, the agency assigned it a raw score of 4 points under the delivery factor. Danaher's price for line item No. 1-- \$[deleted] per item--received a raw score of 5 points. Id. at 3.

The agency then multiplied the raw scores for the three evaluation factors by the weights assigned to each of these evaluation factors, which yielded the following results for the four top-scoring firms, including Midland and Danaher:

|                    | Midland | Offeror A | Offeror B | Danaher |
|--------------------|---------|-----------|-----------|---------|
| Past Performance   | 152     | [deleted] | [deleted] | 152     |
| Delivery           | 175     | [deleted] | [deleted] | 140     |
| Price              | 90      | [deleted] | [deleted] | 150     |
| Total Point Scores | 417     | 418       | 430       | 442     |

Agency Report, Tab 10, Evaluation Chart.

The agency awarded a contract for line item No. 1 to Danaher because its proposal received the highest total point score of the 15 proposals received.

Midland challenges the agency's decision to award line item No. 1 to Danaher, contending that all the agency did was to mechanically consider the total point scores assigned to the Midland and Danaher proposals and then award to Danaher because its proposal had the highest total point score. Midland maintains that the agency made no meaningful price/technical tradeoff, pointing out, for example, that

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(...continued)

as excellent and assigned a raw score of 5 points, while proposed delivery schedules of 61 to 90 days would be evaluated as good and assigned a raw score of 4 points.

<sup>3</sup> With regard to price, points were assigned based on comparison to the lowest price received. Thus, for example, a raw score of 5 points was assigned to prices within 5 percent of the lowest proposed price, and a raw score of 4 points was assigned to prices within 6-10 percent of the lowest proposed price.

the agency failed to consider whether Midland's proposed [deleted]-day delivery schedule was worth the payment of an approximate [deleted] percent price premium in light of Danaher's significantly longer proposed delivery schedule of [deleted] days.<sup>4</sup>

While this is a commercial-item procurement, it was conducted using negotiated procedures, at least in terms of the substance of the agency's actions.<sup>5</sup> Specifically, the solicitation provided that the combination of technical evaluation factors--past performance and delivery--would be considered significantly more important than price in determining the proposals that were most advantageous to the government. Under this type of evaluation scheme, an agency has the discretion to determine whether the technical advantage associated with an offeror's proposal is worth its higher price. The propriety of a price/technical tradeoff turns not on the difference in the technical scores or ratings per se, but on whether the agency's judgment concerning the significance of the difference is reasonable and adequately justified in light of the evaluation scheme. Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 4.

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<sup>4</sup> Midland, which received the maximum raw score of 5 points for its proposed delivery schedule of [deleted] days, objects to the agency's reliance on the results of the market survey as the basis for the scoring methodology under the delivery evaluation factor. Midland, which, as the incumbent contractor, has delivered the items called for under line item No. 1 within [deleted] days, suggests a scoring methodology for this evaluation factor that would give it a higher total point score (by 10 points) relative to Danaher. Using its proposed methodology, Midland maintains that it would have been selected for the award of line item No. 1. Midland's Supp. Protest, Oct. 6, 2006, at 8. Contrary to Midland's position, we believe that the agency reasonably used the results of the market survey, in which Midland participated, as a benchmark in determining how it would evaluate each offeror's proposal for the delivery evaluation factor. Midland's objection amounts to no more than mere disagreement with the agency's evaluation approach and fails to establish that the agency's evaluation in this regard was unreasonable. See Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 8 n.8. Moreover, as will be discussed in this decision, even if the agency had used Midland's proposed scoring methodology for the delivery evaluation factor, the agency still would have been required to document a meaningful tradeoff in accordance with the terms of the solicitation, as opposed to awarding a contract to Midland for line item No. 1 based solely on a higher total point score.

<sup>5</sup> It is not entirely clear from the record that the agency intended to conduct this commercial item acquisition using FAR Part 15 negotiated procedures, although, for example, the RFP does reference in its instructions to offerors FAR § 15.306(a), a provision that addresses clarifications and award without discussions.

In order for our Office to perform a meaningful review of an agency's award determination, the agency is required to have adequate documentation to support its evaluation of proposals and its award decision. Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4; Biospherics, Inc., B-278508.4 et al., Oct. 6, 1998, 98-2 CPD ¶ 96 at 4; Arco Mgmt. of Wash., D.C., Inc., B-248653, Sept. 11, 1992, 92-2 CPD ¶ 173 at 3. An award decision is not reasonable where there is no documentation or explanation to support the price/technical tradeoff and where the agency makes its award decision based strictly on a mechanical comparison of the offerors' total point scores. Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 4; see also FAR §§ 12.602(c), 15.308.

The evaluation record here consists of one-paragraph summaries of the proposals, and charts showing for each evaluation factor the agency's assignment of raw scores, the calculation of weighted scores, and the total point score for each proposal. The record lacks any documentation reflecting a meaningful comparative analysis of proposals or any explanation of why Danaher's lower technically rated, lower-priced proposal was selected for award over Midland's higher technically rated, higher-priced proposal. The record shows that the agency relied on a mechanical comparison of the total point scores assigned to the Midland and Danaher proposals without any qualitative assessment of the technical differences between these proposals to determine whether Midland's technical superiority would justify the payment of a price premium.<sup>6</sup>

We recommend that the agency perform and document a price/technical tradeoff analysis. If the agency determines that Danaher's proposal for line item No. 1 is not the most advantageous to the government, we recommend that the agency terminate for the convenience of the government Danaher's contract for this line item and award to the offeror whose proposal is determined to be the most advantageous. In addition, we recommend that the agency reimburse Midland for the reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2006). Midland's certified claim for costs,

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<sup>6</sup> In response to the protest, the contracting officer states that Danaher had the highest technical score and the lowest price. Supp. CO Statement, Oct. 26, 2006, at 4. The contracting officer's statement is not supported by the record, which clearly shows that for the two technical evaluation factors--past performance and delivery--Midland received 327 total technical points, while Danaher received 292 total technical points. Clearly, Midland, not Danaher, had the highest technical score. In addition, to the extent the contracting officer suggests that the Midland and Danaher proposals were essentially technically equal, such that the award to Danaher, the low-priced offeror, was consistent with the terms of the solicitation, we point out that there is no support in the record for a finding of technical equality between these two proposals.

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

The protest is sustained.

Gary L. Kepplinger  
General Counsel