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

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Decision

Matter of: Tiger Truck LLC

File: B-310759; B-310759.2

Date: February 7, 2008

David P. Metzger, Esq., and Kristen E. Ittig, Esq., Arnold & Porter LLP, for the protester.

James H. Roberts, III, Esq., and Carrol H. Kinsey, Jr., Esq., Van Scoyoc Kelly PLLC, and Henry P. Schrenker, Esq., The Schrenker Law Firm, for Mag International, Inc., an intervenor.

Lee W. Crook, III, Esq., and Erica Stigall, Esq., General Services Administration, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that successful vendor did not furnish a quotation for utility trucks with features requested by the agency such as E-85 (ethanol) engines and automatic transmissions is denied where it was clear from the successful vendor's quotation that it was offering trucks with the specified features.

2. Where request for quotations required past performance references from customers who had purchased vehicles of "the same or similar makes and models" as those solicited, vendors were not restricted to submitting references from customers who had previously purchased vehicles identical to those solicited.

DECISION

Tiger Truck LLC protests the General Services Administration's (GSA) issuance of a task order for utility trucks and vans to Mag International, Inc. pursuant to request for quotations (RFQ) No. QSDACEB-Z4-07-2320. The protester argues that Mag's quotation should have been rejected as technically unacceptable.

We deny the protest.

The RFQ was issued by GSA's Federal Acquisition Service to acquire vehicles on behalf of the Department of the Air Force. The solicitation sought quotations for the delivery of five types of utility trucks and vans to over 70 different locations both in

and outside the United States.¹ The utility vehicles have a maximum speed of 25 m.p.h. and are not designed for use on commercial roadways or interstate highways; that is, they are for use on base only. The RFQ furnished a technical description for each type of vehicle, which defined required features of the vehicles such as their rated load capacity, gross weight rating, prime mover (i.e., engine) type, transmission type, and seating capacity. The solicitation also identified several customized options that the Government might request on particular vehicles. Of relevance to this protest, these options included an E-85 (ethanol) engine (in place of the standard gas engine) and an automatic transmission.² Pricing spreadsheets identified the optional features to be included on the vehicles ordered; the locations to which the vehicles were to be delivered, and the number of vehicles to be delivered to each location.

The solicitation provided for issuance of an order to the vendor submitting the lowest priced technically acceptable quotation. The RFQ defined the following standards for determining technical acceptability:

1. Technical conformance to the Government's Specifications.
 - a. Conformance to DLA [National Stock Number] Configuration Data Sheet
 - b. Proper Identification of the current manufacturing Country of Origin.
2. Delivery of ALL [vehicles] within 120 Calendar Days After Approval of 1st Article Inspection.
3. Past Performance References
 - a. Contractor shall submit a minimum of five (5) past-performance references with current contact information (including office phone number and email addresses).
 - b. Reference list shall consist entirely of former and current customers who have purchased the same or similar makes and models of the [vehicles] requested in the solicitation.
4. Manufacturer's Warranty Terms shall include a minimum of full-coverage for 12,000 miles **AND** 12 months from date of Government Acceptance, whichever event occurs sooner.

¹ The five types of vehicles sought were utility trucks with standard cabs (pricing for a total of 329 requested), utility trucks with crew cabs (190 requested), utility cargo vans (194 requested), heavy duty utility trucks with standard cabs (56 requested), and heavy duty utility trucks with crew cabs (3 requested).

² E-85 engines were requested on 221 of the 329 trucks with standard cabs, on 69 of the 190 trucks with crew cabs, on 103 of the 194 vans, and on all of the heavy duty trucks. Automatic transmissions were requested on 171 of the trucks with standard cabs, 58 of the trucks with crew cabs, 81 of the vans, and all of the heavy duty trucks.

RFQ amend. PA04, at 2 and 12.

Three vendors submitted quotations prior to the August 31, 2007 due date. The agency's technical evaluators determined the quotations of both Tiger and Mag to be technically acceptable and the quotation of the third vendor to be technically unacceptable. Mag quoted a total price of \$6,776,001, whereas Tiger quoted a price of \$9,218,377. Because Mag's quotation was technically acceptable and lower in price than Tiger's, the agency selected Mag to receive the order. The order was issued on September 21.

On September 27, Tiger filed an agency-level protest objecting to issuance of the order to Mag. By decision dated October 25, the contracting officer dismissed in part and denied in part the protest. On November 5, Tiger protested to our Office.

In its protest, Tiger alleged that Mag "does not and cannot produce" vehicles that meet the RFQ's requirements pertaining to seating capacity, or that incorporate E-85 engines and/or automatic transmissions. Protest at 7. Accordingly, Tiger concluded that the agency must have waived its request for these features in evaluating Mag's quotation for technical acceptability.³ In support of its allegation, the protester asserted that Mag had not in the past sold vehicles incorporating the above features.

The agency addressed these issues in a detailed manner in its report, citing evidence in support of its finding that Mag had complied with the above features. Specifically, the agency highlighted specification and requirements charts Mag had included in its quotation (the former summarized the specifications of the vehicles offered by Mag, while the latter listed the RFQ's technical requirements for each vehicle and stated whether or not the vehicle offered by Mag complied with each requirement). Tiger, however, in its comments did not take issue with or attempt to rebut the agency's position and arguments that Mag had offered vehicles with the required seating capacities and with the option of an automatic transmission. In addition, except as to the required cargo vans, Tiger did not take issue with or attempt to rebut the agency's position that Mag had offered the option of an E-85 engine on all vehicle types. Accordingly, we consider Tiger to have abandoned all of the foregoing arguments.⁴ CM Mfg., Inc., B-292370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

³ The required seating capacity for each of the five vehicle types was "two-three." RFQ amend. PA04, at 4-8.

⁴ The protester also alleged in its initial protest that the heavy duty utility trucks offered by Mag failed to meet the RFQ's technical requirements pertaining to rated load capacity and vehicle gross weight rating. While Tiger's protest did not include any factual support for its allegation, the agency demonstrated in its report that the heavy duty trucks offered by Mag were in compliance with the above requirements.

(continued...)

Tiger, however, continued to argue that the cargo vans offered by Mag failed to offer the option of an E-85 engine. In support of its argument, the protester correctly pointed out that neither the specification chart nor the requirements chart for Mag's cargo van represented that the E-85 engine was available as an option.⁵ The agency responded that Mag had made clear on its pricing spreadsheets that it was offering vehicles with E-85 engines where requested. The agency explained that in response to each line item requesting a cargo van with an E-85 engine, Mag had quoted a price for a vehicle that it identified as a C-Mag Utility Cargo Van "with E-85." We think that this was sufficient to make clear that Mag was offering pricing for cargo vans with E-85 engines where requested and that the agency's evaluation in this regard was reasonable.

Next, Tiger argues that the agency's evaluation of Mag's past performance was flawed. According to Tiger, the RFQ required each vendor to submit five past performance references from customers who had previously purchased from it vehicles identical to those solicited here, that is, trucks with E-85 engines and automatic transmissions, and that Mag failed to provide the required references.

The evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history to be considered, is a matter of agency discretion that we will not find improper unless it is unreasonable, inconsistent with the solicitation criteria or procurement statute or regulation, or undocumented. Standard Commc'ns., Inc., B-296972, Nov. 1, 2005, 2005 CPD ¶ 200 at 5. Here, there simply is no basis for the protester's argument that the agency was required under the solicitation to consider only past performance references from customers who had previously purchased vehicles identical to those under the RFQ. Rather, the solicitation explicitly permitted references from customers who had purchased "similar" makes and models. RFQ amend. PA04, at 2 and 12. Consistent with the RFQ, the agency determined that the past performance references submitted by Mag were for sufficiently similar vehicles, and the protester has not demonstrated that this determination was unreasonable.

The protester also argues that the agency failed to document adequately its evaluation of vendors' past performance. In support of this contention, Tiger notes that the only documentation in the record pertaining to the evaluation of Mag's past performance consisted of the following:

(...continued)

Again, Tiger did not address these issues in its comments and we therefore conclude that these arguments were abandoned as well.

⁵ Under the RFQ, vendors merely had to self-certify compliance with the various vehicle requirements and specified options. Contracting Officer's Statement at 12.

Robins AFB, GA [deleted]

Vandenburg AFB, CA [deleted]

Camp Pendleton, CA [deleted]

The vendor provided fourteen (14) prior past performance references. A random sample of 3 references were selected to be contacted. Question topics to be asked included overall quality of the vehicle, and level of satisfaction with the purchase. Prior customers gave an acceptable approval rating of the Utility Vehicles.

AR, Tab 16. The protester contends that the documentation is deficient because it furnishes “no indication of what vehicles Mag provided at the three selected sites, or what response was received from the three individuals referenced for those three sites.” Supplemental Protest and Comments, Dec. 17, 2007, at 10. The protester further argues that the documentation is deficient in that it fails to demonstrate that the agency reasonably considered the similarity of Mag’s prior contracts in its evaluation.

We recognize that the contemporaneous narrative description of the agency’s past performance evaluation is sparse; however, given the limited scope of the past performance information sought by the agency, and the fact that there was to be no comparative assessment of vendors’ past performance under the evaluation scheme here—past performance was merely evaluated on a pass/fail basis—we conclude that the contracting officer’s documentation was sufficient and supports the reasonableness of the agency’s evaluation of Mag’s past performance. While the protester argues that there is no evidence that the contracting officer in fact inquired as to the similarity of the vehicles previously furnished by Mag to those solicited, it is clear from the record that the agency obtained information from Mag’s past performance references regarding their ratings on experience with Mag “utility vehicles,” which are the same general type of vehicles sought under the RFQ. Moreover, the record demonstrates that the past performance inquiries reflects that the customers’ viewed Mag’s performance as “acceptable.” As a consequence, we have no basis to sustain the protest in this regard.

Finally, in a supplemental protest filed on November 12, 2007, Tiger argued that GSA should have disqualified Mag’s quotation from consideration because Mag utilizes a Chinese company as a subcontractor in the manufacture of its vehicles, Harbin Hafei Motor Co., Ltd., which is “integrally entwined” with a company (the China National Aero-Technology Import and Export Company (CATIC)) that the Department of State has banned from receiving federal contracts pursuant to the Iran and Syria

Nonproliferation Act, Pub. L. 106-178, 114 Stat. 38 (2000), as amended by Pub. L. 109-112, 119 Stat. 2366 (2005).⁶ We dismiss this ground of protest as untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, as a general matter, protests based on other than alleged solicitation improprieties must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2007). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.-Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, the record clearly reflects that as of July 5, 2007, Tiger was aware of Mag's use of Harbin Hafei in the manufacture of its utility trucks. See AR, Tab 5-A. Tiger, therefore should have known of Mag's alleged ineligibility for award when it learned of the September 21 order to Mag and at the time it filed its September 27 agency-level protest. Tiger, however, did not raise this issue until November 12, in a supplemental protest to our Office, nearly 2 months later, and more than 10 days after Tiger was on notice of this basis for protest.⁷

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ Tiger did not raise this argument in its agency-level protest.

⁷ Tiger contends that this basis of protest is timely because it did not learn that Mag's subcontractor was a banned entity until November 6, 2007. According to Tiger, uncovering such information took "time and effort" through its own investigation, which it "diligently pursued." Tiger's Comments on Supplemental AR, Dec. 26, 2007, at 4. Beyond general assertions regarding the difficult nature of piecing together information regarding Mag's subcontractor Harbin Hafei, and its own due diligence, Tiger has failed to provide any evidence to support a finding that it should not have recognized Mag's ineligibility when it learned of the agency's decision to place the order with Mag, nor has Tiger provided any evidence suggesting that it did in fact initiate its investigation of Mag's subcontractor in a timely and diligent manner. As a consequence, there is no basis for our office to conclude that Tiger's protest in this regard was timely filed.

