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**Comptroller General
of the United States**

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

Decision

Matter of: American Material Handling, Inc.

File: B-297536

Date: January 30, 2006

A. Sid Goss for the protester.

Vera Meza, Esq., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement which provided for award on the basis of a price/technical tradeoff, protest challenging the selection of the higher-priced proposal is denied, where, consistent with the solicitation's evaluation factors, the source selection authority found the awardee's offer of a shorter delivery schedule to outweigh the protester's price advantage.

DECISION

American Material Handling, Inc. (AMH) protests the award of a contract to JLG Industries under request for proposals (RFP) No. W56HZV-05-R-D134, issued by the U.S. Army Tank-automotive and Armaments Command (TACOM) for forklifts to be delivered to Iraq. AMH argues that its lower-priced proposal should have been selected for award.¹

We deny the protest.

The RFP provided for the award of a 2-year, fixed-price, indefinite-delivery, indefinite-quantity (ID/IQ) contract for the purchase and delivery of tactical, variable reach, all-wheel drive, rough terrain forklifts to Iraq. RFP attach. 001, Specification.

¹ The protester was not represented by counsel who could be admitted to a protective order and, therefore, the protester did not have access to source-selection-sensitive and proprietary information. Accordingly, our discussion in this decision is necessarily general. Our conclusions, however, are based on our review of the entire record.

A quantity of 6 forklifts (to be ordered at the time of contract award) was identified as the guaranteed minimum quantity, and 46 forklifts as the maximum quantity. RFP at 6.

The RFP provided for a two-phased evaluation of proposals. Offerors were informed that, under phase I, the firms' proposals would be evaluated on a pass/fail basis for compliance with the RFP's specifications. An acceptable proposal was defined as one "where there is essentially no doubt" that the offered forklift would "meet each of the specification requirements." RFP at 68.

Offerors were informed that those proposals found to be acceptable under the phase I evaluation would be qualitatively evaluated to determine which proposal was most advantageous under the following phase II evaluation factors: delivery, price, and small business participation. The delivery factor was stated to be more important than the price factor, and the price factor was stated to be more important than the small business participation factor. Offerors were informed that the basis for award would be a price/technical tradeoff which considered the "relative advantages, disadvantages, and risks of each proposal." Id.

With respect to the delivery factor, the RFP provided that the agency would evaluate the offeror's proposed

single date for completion of delivery of the minimum guaranteed quantity to the [freight on board] Destination point in Iraq, Umm Qasr.

The Delivery Area evaluation will assess the extent to which contract hardware deliveries . . . satisfy the objective delivery schedule for the guaranteed minimum quantity of Indefinite-Delivery Indefinite Quantity (IDIQ) contract deliverables. The guaranteed minimum quantity is identified in the CLIN schedule. The Delivery Area will also assess the level of risk in achieving the objective delivery date. For the purpose of this RFP, the objective delivery date for the guaranteed minimum quantity is 180 days after receipt of order (DARO). The Delivery Area evaluation will be performed using the information provided in the Delivery Questionnaire and any other validated information gathered by the Government.

Id. at 68-69.

With respect to the small business participation factor, offerors were informed that the agency would evaluate "the percentage of total subcontracted dollars which the Offeror credibly proposes to subcontract to U.S. small business concerns." Offerors were informed that this provision applied "to every offeror (U.S. and non-U.S.), regardless of size-status or location of its manufacturing facility or headquarters." Id. at 69.

TACOM received proposals from nine firms, including AMH and JLG, by the closing date for receipt of proposals. Four firms' offers, including those of AMH and JLG, were determined to be technically acceptable in the phase I evaluation. Discussions were conducted with the acceptable offerors, and revised proposals received. AMH's and JLG's final revised proposals were evaluated under phase II as follows:

	Delivery (DARO)	Price	Small Business Participation
AMH	169	\$7,276,478	Good
JLG	140	\$7,563,351	Good

AR, Tab 17, Source Selection Evaluation Board Briefing to Source Selection Authority (SSA), at 2.

Following a briefing, the SSA selected JLG's offer for award, based upon JLG's proposal of a shorter delivery schedule for the guaranteed minimum and despite the \$286,873 price premium associated with that firm's offer. Specifically, the SSA found

the JLG proposal to be superior overall to the proposal of AMH. In making this decision, I recognize that the delivery area is more important than price, and that JLG's proposed delivery is more advantageous than that of AMH. Coalition personnel in Iraq have made it clear that faster delivery is better. [Multi-National Security Transition Command-Iraq] personnel specifically mentioned that early delivery of this tactical forklift is critical to providing Iraqi troops with the capability to off-load supplies from containers.

AR, Tab 17, Source Selection Decision, at 5. Award was made to JLG, and this protest followed.

AMH complains that TACOM unreasonably viewed JLG's offer of a shorter delivery schedule for the minimum quantity to be a discriminator in the SSA's price/technical tradeoff award selection decision. In AMH's view, the RFP only provided that offerors' proposals would be evaluated to determine whether the proposed schedule was credible and would "beat or meet the 180 day delivery objective." AMH argues that, because both it and JLG offered an accelerated delivery schedule, the two firms' proposals should have received the same evaluation rating for this factor.² Protester's Comments at 1.

² AMH also initially protested that JLG's proposed 140-day delivery schedule was not credible. Protest at 2. TACOM addressed the credibility of JLG's proposed schedule in its agency report, see Contracting Officer's Statement at 3; AR, Tab 14, Delivery Area Evaluation of JLG, and AMH failed to respond in its comments to the agency's

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We disagree with AMH's view that the solicitation did not allow TACOM to consider a shorter, credible delivery schedule to be a proposal advantage. Here, the RFP specifically informed offerors that award would be made on a price/technical tradeoff basis, considering the evaluated advantages, disadvantages and risks of each proposal under the delivery, small business participation, and price factors, and the delivery factor specifically stated that the offeror's proposed "single date for completion of delivery of the minimum guaranteed quantity" would be considered. RFP at 68. We have found that where, as here, a solicitation provides for award on a best-value basis, an agency may reasonably assess as a proposal advantage the manner in which a proposal exceeds the minimum requirements of the solicitation. See, e.g., Preferred Sys. Solutions, B-291750, Feb. 24, 2003, 2003 CPD ¶ 56 at 3-4; F2M-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 7-8.

AMH also challenges the SSA's price/technical tradeoff determination that JLG's offer of a 29-day shorter delivery schedule was worth the \$286,873 price premium associated with JLG's higher-priced proposal. In this regard, AMH argues that JLG's accelerated delivery schedule was for only the minimum guaranteed quantity and that the agency has not explained why an earlier delivery schedule for the minimum quantity "is better for the Iraq mission." Protester's Comments at 2.

Selection officials have considerable discretion in making price/technical tradeoff decisions. Their judgments in these tradeoffs are by their nature subjective; nevertheless, the exercise of these judgments must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. ACS State Healthcare, LLC et al., B-292981 et al., Jan. 9, 2004, 2004 CPD ¶ 57 at 44.

Here, the SSA recognized AMH's price advantage, but concluded that JLG's shorter delivery schedule was worth the price premium. In making this decision, the SSA appropriately recognized the relative importance of the solicitation's evaluation factors, in particular that the delivery factor (that focused on the guaranteed minimum quantity) was more important than the price factor. AR, Tab 17, Source Selection Decision, at 2. The SSA found that JLG's shorter delivery schedule for the guaranteed minimum quantity provided a real benefit to the government, given that "early delivery of this tactical forklift is critical to provide Iraqi troops with the capability to off-load supplies from containers." Id. at 5. Although AMH does not

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arguments, so we view this protest ground to be abandoned. See Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 5 n.6.

believe that the 29-day shorter delivery schedule was worth the additional \$286,873, AMH's disagreement with the SSA's business judgment does not show that that judgment is unreasonable. See ACS State Healthcare, LLC et al., supra, at 45. Rather, we find that the decision reflects a reasonable price/technical tradeoff assessment.

AMH also complains that it offered a forklift manufactured by a Canadian small business and that TACOM did not consider this subcontractor in its evaluation of AMH's proposal under the small business participation factor. Protest at 3. As TACOM notes, the RFP informed offerors that the agency under this evaluation factor would consider only the participation of domestic small business concerns. RFP at 69. Under our Bid Protest Regulations, protests of alleged apparent solicitation improprieties are required to be filed prior to bid opening or the date set for receipt of initial proposals. See 4 C.F.R. § 21.2(a) (2005). AMH's post-award challenge to this solicitation provision is untimely and is dismissed.

AMH nevertheless argues that its proposal should have received a higher evaluation rating than JLG under the small business participation factor because TACOM's evaluators assessed AMH's U.S. small business concern participation to be 100 percent whereas JLG's domestic small business participation was evaluated to be only 43 percent. See AR, Tab 16, Small Business Participation Evaluation. The record establishes, however, that AMH is not entitled to a higher evaluation rating than JLG under the small business participation factor, which was the least important evaluation factor. In this regard, despite the agency's evaluation assessment, AMH itself indicated in its Small Business Participation Questionnaire that it would have significantly less domestic small business participation than would JLG. See AR, Tab 6, AMH Small Business Participation Questionnaire.

The protest is denied.

Anthony H. Gamboa
General Counsel