



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Best Foam Fabricators, Inc.

File: B-275436

Date: February 20, 1997

William E. Hughes III, Esq., Whyte Hirschboeck Dudek S.C., for the protester.
John E. Lariccia, Esq., and Lawrence W. Kelly, Esq., Department of the Air Force,
for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that evaluation method provided for under Blue Ribbon Program (BRP) should not have been applied in lieu of Performance-Price Trade-Off method, and that award to Blue Ribbon Contractor at higher evaluated price therefore was improper, is denied where record shows that items were urgently needed to meet essential mission requirements, which is one of the circumstances under which the BRP may be invoked.

DECISION

Best Foam Fabricators, Inc. protests the award of a contract to Engineered Fabrics Corporation (EFC) under request for proposals (RFP) No. F09603-96-R-20365, issued by the Department of the Air Force for 180 foam block assemblies for the F-15 aircraft main fuel tank.

We deny the protest.

The RFP (issued May 29, 1996) contemplated award of a fixed-price contract, was restricted to qualified sources, and provided for the addition of a 10-percent evaluation factor to all offers other than those of small disadvantaged businesses (SDB). See Defense Federal Acquisition Regulation Supplement § 252.219-7006. The RFP provided that award was to be based on the best value to the government, and that the Performance-Price Trade-Off (PPT) technique for determining best value would be applied as follows: all technically acceptable offers would be ranked by evaluated price and assigned a performance risk rating (low, moderate or high). If the low technically acceptable offer also received a low performance risk rating, it would be deemed the best value; if the low acceptable offer received a moderate or high risk rating, the source selection authority would "use good business judgment in making the best value award decision."

The RFP also contained Air Force Materiel Command Federal Acquisition Regulation Supplement (AFMCFARS) § 5352.215-9003, The AFMC Blue Ribbon Program, and § 5352.215-9004, The AFMC Blue Ribbon Program-Evaluation Factors for Award. The Blue Ribbon Program (BRP), which applies to negotiated spare parts acquisitions such as this one, recognizes that responsible contractors have varying degrees of quality and delivery performance, and that award to the lowest evaluated price offeror is not always in the best interest of the government. The BRP allows contractors to apply for Blue Ribbon Contractor (BRC) status, which involves examination of the contractor's past quality and delivery performance. If a contractor is designated a BRC prior to award, the contracting officer may consider BRC status in the award decision. AFMCFARS §§ 5315.605-90, 5352.215-9003, and 5352.215-9004. A price premium of up to 10 percent (above a nonBRC's price) may be paid (AFMCFARS § 5315.605-90(h)(6)) based on certain considerations, including: "A need for the item(s) to be delivered within the time constraints or quality parameters stated in the solicitation, to meet essential mission requirements." AFMCFARS § 5352.215-9004(b).

Best Foam and EFC were the only qualified offerors to submit proposals, both of which were found acceptable. EFC's offered unit price was low at \$3,550 (\$639,000 total), and Best Foam's was \$3,700 (\$666,000). However, because Best Foam is an SDB, a 10-percent evaluation factor was added to EFC's price, increasing it to \$702,900, and leaving Best Foam's evaluated price low. However, the information gathered by the agency for the performance risk assessment (Best Foam did not submit any of the required performance information) revealed a current workload of three contracts, two of which were delinquent, and three contracts over the previous 12 months (one of which was for a foam product), all of which were delinquent (by 200, 6, and 82 days). The agency was advised that two delinquencies were due to mishandling of material in the manufacture of life vests and life preservers, which did not pass quality assurance inspection; another was due to a change in vendors after submission of first articles, which necessitated a new first article and delayed production; and another was due to production scheduling problems. Further, the agency was advised that an April 1995 pre-award survey of Best Foam resulted in a "no-award" recommendation due to cash-flow problems--a \$150,000 monthly shortfall and excessive liabilities, including a \$5 million loan. Although the agency also noted that Best Foam had provided the F-15 foam assemblies for many years under an 8(a) set-aside contract, and that quality and performance had been good, based on all of this information the agency assigned Best Foam's proposal a moderate performance risk rating.

In contrast, EFC's proposal received a low risk rating (12 current contracts with 2 delinquencies; 10 contracts over the previous 12 months, with no delinquencies). Although EFC had not previously supplied foam kits directly to the government, it had supplied them to McDonnell Douglas, the prime contractor for the F-15, for

several years. EFC had also supplied the F-15 fuel tanks (for which the foam is required) as a prime contractor.

EFC's proposal was based on an alternative delivery schedule (as permitted under the RFP)--1 unit 45 days after receipt of order (ARO) and the balance at a rate of 20 kits per month, versus the RFP schedule of 180 units 30 days ARO. Although Best Foam's proposal was based on the RFP schedule, the agency doubted Best Foam would be able to meet it in light of the firm's recent performance problems. The agency held discussions with both offerors, resulting in a delivery schedule of 1 unit 21 days ARO, with the balance to be shipped at a rate of 20 kits per month. The agency then requested best and final offers (BAFO). Best Foam did not change its \$666,000 price. EFC reduced its total price to \$610,200, evaluated as \$671,220 after addition of the 10-percent SDB evaluation factor.

At this juncture, the agency considered making award to EFC under the RFP's PPT best value approach, or requesting a pre-award survey on Best Foam. However, no award could be made due to a lack of funding, despite the urgent need for the items and their priority status. Subsequently, on September 6, contracting officials were advised that EFC had just been certified as a BRC. As the agency already had determined that this was an urgent requirement essential to meeting mission requirements (the RFP specifically indicated that it was urgent), one of the scenarios for application of the BRP, it proceeded to make a BRP award assessment. In light of the minor evaluated price difference between the proposals (\$5,220, or less than 1 percent), EFC's proposal was determined to be in line for award under the BRP; on November 7, after funding was obtained, award was made to EFC.

Best Foam alleges that it was improper to base the award on a BRP evaluation because, contrary to the agency's position, there in fact was no urgency related to meeting mission requirements, as illustrated by the relaxation of the delivery schedule for EFC.¹

The BRP evaluation was reasonable. The agency states that this procurement--intended to provide the items on an interim basis, pending deliveries under another

¹Best Foam also initially argued that (1) the BRP did not apply because price was not the sole factor in the award decision, and (2) discussions with EFC improperly failed to include questioning as to whether EFC has maintained an adequate technical data package. The agency addressed these arguments in its report, and BFF failed to rebut the agency's position in its comments. Under these circumstances, we consider the issues abandoned. Hi-Shear Technology Corp., B-258814.2, May 17, 1995, 95-1 CPD ¶ 250.

recently awarded contract--was considered urgent from its inception (as illustrated by the statement "urgent requirement" on the front of the RFP), since the agency had only eight items on hand, with eight priority back orders and a demand rate of 15 per month. We find no basis to question the agency's explanation in this regard. We also find that the relaxation of the delivery schedule clearly was based on practical considerations, rather than a change in the procurement's urgent status. While Best Foam had agreed to the RFP's delivery schedule, the agency ultimately determined that award to Best Foam based on the urgency of the requirement would make no sense given that firm's recent prior timely performance problems; the agency found Best Foam's mere agreement to the expedited schedule insufficient to overcome its concerns stemming from those delinquency problems. We conclude that the agency's determination of urgency was reasonable, and that the BRP was appropriately applied; the award to EFC, therefore, was reasonable, since its evaluated price was within 10 percent of Best Foam's.

In any case, there is no reason to believe that the award decision would have been any different under the PPT evaluation method outlined in the RFP. As described above, the PPT method would permit the agency to balance EFC's lower performance risk against Best Foam's marginally lower evaluated price; this comparison presumably would have yielded the same result as the agency's balancing of EFC's BRC status against Best Foam's lower price. In the final analysis, there was an overriding urgent need for the items, and Best Foam's prior difficulties led the agency to question whether it could provide delivery even within the relaxed schedule. These concerns were proper under the terms of the RFP and, given these circumstances, the agency reasonably could make award to EFC at its slightly higher evaluated price under either evaluation method.

In its December 30 comments on the agency report, Best Foam maintains that it was denied meaningful discussions because it was not permitted to respond to the reports on its past performance, in violation of Federal Acquisition Regulation (FAR) § 15.610(c) (FAC 90-31). Under our Bid Protest Regulations, protest allegations such as this must be raised no later than 10 days after the basis for the argument is known. Section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). The agency reports that it advised Best Foam of its reliance on certain past performance references during its November 14 debriefing. In its initial protest, Best Foam challenged the adequacy of discussions on other grounds (those arguments subsequently were abandoned), but did not argue that it should have been allowed to rebut performance information, and did

not cite FAR § 15.610(c). Therefore, since this argument was not raised within 10 days after the debriefing, it is untimely and will not be considered. Curtis Ctr. Ltd. Partnership--Recon., B-257863.3, Mar. 20, 1995, 95-1 CPD ¶ 147.

The protest is denied.

Comptroller General
of the United States