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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Rotair Industries, Inc.

**File:** B-276435.2

**Date:** July 15, 1997

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Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Ruffner & Werfel, for the protester.

Benjamin G. Perkins, Esq., and Niketa L. Wharton, Esq., Defense Logistics Agency, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency selection of higher-priced vendor with a shorter delivery schedule and better past performance record was reasonable and consistent with the solicitation's evaluation scheme, which provided that where, as here, the vendor with the best past performance history did not offer the lowest price, the agency would make a tradeoff of price and past performance and other considerations, including delivery schedule.

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### **DECISION**

Rotair Industries, Inc. protests the issuance of a purchase order by the Defense Supply Center Richmond (DSCR), Defense Logistics Agency to Aero Components Company (Aero) under request for quotations (RFQ) No. SPO460-97-Q-D651 for a quantity of hoist fittings. Rotair challenges the adequacy of the best value determination which resulted in an award to Aero.

We deny the protest.

The RFQ was issued on December 16, 1996, to qualified sources for a quantity of 58 hoist fittings identified as National Stock Number 1560-00-932-5539, Federal Supply Class (FSC) 1560. The RFQ provided a delivery schedule calling for delivery "within 90 days ARO [after receipt of order]. If unacceptable provide best possible delivery \_\_\_\_\_. " The RFQ advised that the best value award decision would be based on a tradeoff between price and past performance, with price and past performance being equally weighted. The RFQ further stated that if the vendor with the best past performance history did not offer the lowest price, the agency would

make the appropriate tradeoff of price for past performance, and listed several other considerations such as weapons system application/item criticality, delivery schedule/inventory status, and historical delivery/quality problems, that would be considered by the agency in its tradeoff determination.

Past performance would be evaluated in accordance with an automated best value model (ABVM).<sup>1</sup> The ABVM score, assigned by DSCR on a monthly basis to each vendor for a particular FSC, measures delivery performance during the preceding 12 months, excluding the most recent 2-month period, and quality performance during the past 12 months, excluding the most recent month. Negative delivery and quality performance data to be included in the ABVM score is made available to each vendor by the 15th day of the month on the DSCR electronic bulletin board and the RFQ advised vendors that they could review the performance data and challenge its accuracy if they disagreed with it. In this regard, the RFQ stated that "the challenge period for the performance data used to calculate the ABVM score for a particular month ends the day before the new score becomes effective." Moreover, since the posted ABVM scores would be used in making best value award decisions, vendors were urged to file challenges to performance data in a timely manner and the RFQ provided instructions on where and to whom challenges should be submitted.

Five quotations were submitted by the January 6, 1997, closing date. Rotair submitted the lowest-priced quotation of \$256.55 each with delivery 330 days ARO, but received an ABVM score of 76.4 based on 39 contract line items. Aero submitted the next lowest-priced quotation of \$306.00 each, offered delivery 150 days ARO and had the highest ABVM score of 87.4 based on 391 contract line items. In comparing the relative merits of the two quotations, DSCR determined that Aero's higher-priced quotation represented the best value because its past performance as measured by its ABVM score indicated that it was more likely that the government would receive timely delivery, as compared to Rotair's past performance as measured by its lower ABVM score.<sup>2</sup> In making this decision, the

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<sup>1</sup>The ABVM is an automated system which collects a vendor's existing past performance data and translates it into a numeric score which is used for comparison of past performance among vendors. The ABVM score is a combination of the vendor's quality and delivery scores and ranges from 0 to a perfect score of 100.

<sup>2</sup>The protester correctly points out that the agency buyer mistakenly wrote, in the purchase pricing memorandum, that Aero's quote was 16 percent higher than Rotair's when, in fact, it is slightly more than 19 percent higher. The protester concedes, however, that the 16 percent figure is correct as a description of how much lower Rotair's quote was than Aero's. Nothing in the record suggests that the  
(continued...)

agency considered the fact that the item was out of stock and there were numerous backorders waiting to be filled, and concluded that Aero's faster proposed delivery (150 days ARO versus Rotair's 330 days ARO), along with its lower performance risk as represented by its ABVM score offset Aero's slightly higher price when compared to the lower price offered by Rotair.<sup>3</sup> A purchase order was subsequently issued to Aero on January 27, 1997, for 58 units at a total cost of \$17,748.

Rotair protests that the agency's best value determination was flawed and that the agency improperly selected a significantly higher-priced quotation for award. In a best value procurement, price is not necessarily controlling in determining the offer that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the solicitation, with the source selection official often required to make a price/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost that may be associated with that proposal. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the solicitation's evaluation scheme. See USA Elecs., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 3. Consequently, where, as here, the solicitation identifies price and past performance and other considerations as the evaluation criteria and indicates that, if the vendor with the best past performance history has not offered the lowest price, the selection official must make a tradeoff determination and decide which offer represents the best value to the government. See Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13 at 3.

Rotair contests the price/past performance tradeoff because it was based on an evaluation factor--required delivery schedule--not listed in the RFQ. As noted by the protester, the RFQ provided for delivery 90 days ARO or "best possible delivery."

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<sup>2</sup>(...continued)

buyer's misstatement in this regard prejudiced Rotair. Competitive prejudice is an essential element of a viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367, 371 (1992), 92-1 CPD ¶ 379 at 5. It is undisputed that Aero quoted the items for \$306.00 each, while Rotair quoted them at \$256.55 each, a difference of \$49.45 per unit, and that both the buyer and the contracting officer (the source selection official) were aware of the actual quotes submitted by the two firms. Thus, the misstatement in the purchase pricing memorandum is immaterial and provides no basis to object to the price/past performance tradeoff analysis which resulted in a best value award to Aero.

<sup>3</sup>Here, the award determination describes, without contradiction, the stock position for this item as follows: no stock on hand; 119 units due in; 105 backorders; and a quarterly demand forecast of 22 units.

Thus, Rotair argues it would have "taken steps to reduce [its] delivery time" had it known that a faster delivery date would be a factor in the award decision.

We think the solicitation provided ample notice that the agency would consider in its best value determination a vendor's delivery schedule. The solicitation asked for 90 days ARO or the "best possible delivery." Further, the RFQ explicitly provided for consideration of the offerors' delivery schedule/inventory status as part of any price/past performance tradeoff decision. We think the agency clearly stated its intent to assess the "best possible delivery" proposed by vendors within the context of the supply position for this item. While the "award justification" memorandum indicated that a "required delivery schedule" rather than the "best possible delivery" dates was an additional consideration in the agency's best value determination, we think the lack of precision in that wording is immaterial, since Rotair competed on the basis that the agency would compare the "best possible delivery" dates offered by the vendors in conjunction with the inventory status for this item. Given the RFQ language, Rotair was on notice that it should submit its best possible delivery schedule, and its failure to do so is not grounds to disturb the award.

Rotair also protests that the agency failed to demonstrate why Aero's offered delivery schedule was more advantageous to the government and failed to adequately justify the payment of a price premium. The record establishes otherwise. In making the best value determination, the agency recognized the importance of Aero's low performance risk based on its higher ABVM score and faster proposed delivery schedule as compared to Rotair's lower price, lower ABVM score, and longer proposed delivery schedule. The agency also considered the supply position for the item and concluded that award to a higher-priced vendor with a low performance risk and faster delivery was warranted in these circumstances, because Rotair's longer delivery schedule would have a detrimental impact on the continuing backorder status of this critical application item. While Rotair disagrees, we find nothing unreasonable in this determination, which was consistent with the RFQ's tradeoff determination scheme. To the extent Rotair

disagrees with the significance placed on delivery schedule/inventory status, its protest of this solicitation provision after award is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997).

The protest is denied.<sup>4</sup>

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<sup>4</sup>Rotair also argues that DSCR failed to justify the ABVM score assigned to Aero, and that the score therefore could not be relied upon to justify the award. Noting that past performance was to be an evaluation factor weighted equally with price in the best value decision, Rotair contends that the agency's initial failure to disclose how the ABVM scores were computed or to provide the underlying performance data that was used to calculate the ABVM scores provides a basis for sustaining the protest. In response, the agency did provide the formulas used to calculate a vendor's quality and delivery scores and furnished the underlying historical performance data for Aero as well as Rotair. The protester was given an opportunity to review this information and submit any rebuttal. Rather than doing so, Rotair requested that we consider its protest on the existing record. After reviewing all of the supporting historical performance data for the ABVM score assigned to Aero, we conclude that the score is reasonably supported. For example, the performance data identifies contracts with delinquent line items as well as contract line items with quality deficiencies.