



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Marathon Watch Company Limited

File: B-281876; B-281876.2

Date: April 22, 1999

Claude P. Goddard, Jr., Esq., Kilcullen, Wilson and Kilcullen, for the protester.
Philip F. Eckert, Jr., Esq., and Stephen Stastny, Esq., Defense Logistics Agency, for the agency.

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

DIGEST

Agency selection of higher-priced vendor with excellent performance history instead of lower-priced vendor, whose performance reflected delivery delinquencies, was reasonable and consistent with the solicitation's evaluation scheme, which provided that if 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 (including such considerations as inventory status and historical delivery problems), where there was a low inventory of the solicited item and the higher-priced vendor's better performance record indicated a lower performance risk.

DECISION

Marathon Watch Company Limited protests the issuance of a purchase order by the Defense Logistics Agency, Defense Supply Center Richmond (DSCR), to Stocker & Yale, Inc. (S&Y) under request for quotations (RFQ) No. SPO440-99-X-L121 for analog navigator wrist watches.¹ Marathon challenges the adequacy of the best value determination which resulted in the agency's issuance of the purchase order to S&Y.

¹Marathon, a Canadian corporation, was joined in this protest by the Canadian Commercial Corporation (CCC), which endorsed Marathon's quotation. Pursuant to the Defense Federal Acquisition Regulation Supplement (DFARS) § 225.870, contracts with Canadian firms generally are to be made with the CCC, which then subcontracts performance of the contract to a specific firm. However, where, as here, simplified acquisition procedures are used, the small purchase is handled directly with the Canadian firm, not through the CCC. DFARS §§ 225.870-1(c)(3), 225.870-2(e).

We deny the protest.

DSCR issued the RFQ on November 30, 1998 for a quantity of 2,000 watches, National Stock Number 6645-01-364-4042, a "critical application item." RFQ at 1, 3-5. Delivery of the watches was required within 60 days after the vendor's receipt of the order. Id. at 1. The RFQ stated that the watches must conform to specification MIL-W-46374F. Id. at 3. The RFQ contained the standard "Qualification Requirements" clause, as set forth in Federal Acquisition Regulation § 52.209-1, which provides notice that award is limited to vendors offering products that have previously been tested and approved for inclusion on the applicable qualified products list (QPL). Id. at 8-9.

The RFQ advised that the best value determination would be based on a comparative assessment of prices and past performance, which were equally weighted. Id. at 18-19. The past performance factor considered quality performance and delivery performance to be "of equal value." Id. at 18. 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 considerations such as delivery schedule/inventory status and historical delivery/quality problems that could affect the tradeoff determination. Id. at 19.

The RFQ, at 18-19, established that past performance would be evaluated in accordance with an automated best value model (ABVM). The ABVM is a computerized compilation of data on vendors' past performance under DSCR contracts that is converted into numeric scores for comparison by the agency for evaluation purposes. An ABVM score ranging from 0 to a perfect score of 100 is assigned on a monthly basis to each vendor for a particular Federal Supply Class (FSC) (FSC score) and for performance in all FSCs with DSCR (Center score). An offeror may have multiple FSC scores for different items but will have only one Center score, which is an average of the offeror's FSC scores. The ABVM score, whether FSC or Center, is a combination of a vendor's delivery performance score and quality performance score. The ABVM score measures delivery performance during the preceding 15 months, excluding the most recent 2-month period, and quality performance during the past 15 months, excluding the most recent month. The delivery performance score reflects delinquent contract line items--shipments that are not shipped and/or received in their entirety by the delivery due date.

Negative delivery and quality performance data to be included in the ABVM score are made available to each vendor by the 15th day of the month on the DSCR electronic bulletin board. The RFQ advised vendors that they could review their negative performance data and challenge its accuracy if they disagreed with it. In this regard, the RFQ stated that "[t]he 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." RFQ at 18. Since the posted ABVM scores would be

used in making best value award decisions, vendors were urged to file any challenges to the performance data in a timely manner. The RFQ provided instructions on where and to whom challenges should be submitted.

The RFQ stated that in using the ABVM score for evaluating vendors' past performance, the agency would first evaluate each vendor using the FSC score for the solicited FSC in effect at the time quotations are evaluated.² A vendor without an FSC score for that particular FSC would be evaluated on its Center score.

Both Marathon and S&Y submitted quotations to DSCR by the December 2, 1998, due date. Marathon submitted the lowest-priced quotation of \$[DELETED]. S&Y quoted a price of \$93,060. In comparing the relative merits of the two quotations, the contracting officer consulted the ABVM ratings effective for Marathon and S&Y. In his "Award Justification" document, the contracting officer determined that S&Y's higher-priced quotation was the best value based on the following:

[S&Y] is unscored for the FSC. S&Y's Center score is [DELETED]% for five contract lines. Marathon . . . has an FSC score of [DELETED]% with delivery of [DELETED]% and quality of [DELETED]% for 12 contract lines. Marathon's Center score is [DELETED]% for 14 contract lines. Center delivery for Marathon is [DELETED]% for 14 contract lines. Although Marathon has a quoted price that is \$[DELETED] or [DELETED]% less than [S&Y]'s, award will be made to [S&Y] because of Marathon's poor delivery rating and higher performance risk. Marathon has demonstrated a poor record of delivery for the FSC and center score which are both well below the FSC average delivery of [DELETED]%. The minimal savings in price do not offset Marathon's higher performance risk. [S&Y]'s [ABVM] center score of [DELETED]% indicates an excellent past performance record.

The contracting officer also stated in the "Award Justification" document that the price/performance tradeoff was influenced by the "required delivery schedule and inventory status" of the item. Specifically, the contracting officer noted that "[t]his is an Urgent and Compelling procurement with delivery required in 60 days," the item was out of stock, and there were numerous back orders waiting to be filled. DSCR subsequently issued a purchase order for the watches to S&Y on January 4, 1999, in the amount of \$93,060.

Marathon contests the agency's price/past performance tradeoff resulting in the issuance of the purchase order to S&Y because the agency allegedly departed from the RFQ's evaluation scheme by giving more importance to past delivery

²The watches solicited here are in FSC 6645.

performance than to past quality performance or to price. To support its contention that the agency placed undue weight on past delivery performance, Marathon points to the following statement made by the contracting officer in response to its inquiry about the issuance of the purchase order to S&Y:

The trade-off in this urgent and compelling acquisition was influenced by the delivery schedule/inventory status and historical delivery problems. . . . That trade-off consequently gave more weight to delivery ratings as opposed to price.

Letter from Contracting Officer to Protester 2 (Jan. 11, 1999).

Notwithstanding any imprecision in the wording of the contracting officer's statement, the record does not support the protester's view that DSCR used only delivery performance as a basis for comparison between Marathon and S&Y, or that the agency changed the relative importance of delivery performance under the evaluation scheme.

The mere fact that the contracting officer compared the ABVM delivery performance ratings of S&Y and Marathon does not mean he improperly allotted delivery performance more weight than was allowed under the RFQ's evaluation scheme. Rather, as described above in the "Award Justification" document, the contracting officer considered delivery performance in the context of Marathon's and S&Y's overall ABVM past performance ratings (including quality performance) and prices. Because Marathon and S&Y had the same quality performance scores ([DELETED]), it was the differences in their scores for delivery performance that distinguished their past performance. Since S&Y had the best past performance history under the ABVM, but had not offered the lowest price, the contracting officer, as provided for by the RFQ at 19, determined that the appropriate tradeoff of price for past performance would include delivery schedule/inventory status and historical delivery problems. The contracting officer decided that, given these tradeoff considerations, Marathon's lower price was not worth the increased performance risk associated with its past delivery delinquencies, and that award to S&Y, with a slightly higher price but an excellent performance history, was justified to ensure timely delivery and represented the best value to the government. The contracting officer's conclusion was consistent with the RFQ's evaluation scheme and the discretion afforded the contracting officer in making the tradeoff decision.³ See Phillips Indus., Inc., B-280645, Sept. 17, 1998, 98-2 CPD ¶ 74 at 5; USA Elecs., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 4.

³The protester disputes the urgency of the requirement but has failed to show that the agency improperly considered the requirement urgent at the time of the tradeoff determination.

The protester nonetheless argues that the agency had insufficient data on S&Y's past delivery performance record to make any valid comparison with Marathon's. In this regard, the protester argues that S&Y has not established a history of meeting delivery dates for production runs (large quantities) of the watches, and that its deliveries of small quantities of other types of items do not support the agency's conclusion that S&Y has an excellent past performance record, or that it represented a lower performance risk than Marathon.

Even if, as Marathon contends, S&Y has not provided any watches under FSC 6645 to DSCR, and has only delivered small quantities of other items under other FSCs, the protester has failed to show that the agency's evaluation of S&Y's past performance was inconsistent with the RFQ's past performance evaluation scheme or that the agency unreasonably concluded that S&Y had an excellent past performance history. While the RFQ states that vendors will first be evaluated using the FSC score for the solicited FSC, and that the contracting officer could consider the volume of business on which an FSC score is based "as a measure of confidence in the score's indication of performance risk," the RFQ also specifically contemplates that where, as here, a vendor such as S&Y does not have an FSC score for the item solicited, the vendor will be evaluated on its Center score. RFQ at 19. As described above, a vendor's Center score includes its past performance score for all FSCs, including other types of items than the item solicited. S&Y may have delivered only small quantities of these items, but its delivery performance score, under the ABVM, is based on contract lines, not on the quantities of the items shipped. Because all the items S&Y had delivered to DSCR under other FSCs were delivered or sent by their delivery due dates, S&Y properly received a Center ABVM score of [DELETED].

Moreover, notwithstanding Marathon's previous deliveries of large quantities of watches and related items, its delivery performance score for FSC 6645 was below the ABVM average, as was its Center delivery performance score. Considering Marathon's lower-than-average delivery performance for this and other FSCs, and S&Y's excellent delivery performance for the FSCs comprising its Center score, the agency's comparison of the vendors' past performance was reasonable and consistent with the RFQ.⁴ To the extent Marathon protests that the RFQ's evaluation scheme should have favored a vendor's past delivery performance history for this particular FSC in terms of the item or quantity shipped, its protest of the ABVM past performance evaluation scheme after issuance of the purchase order is

⁴Although Marathon maintains that the agency failed to consider the fact that some of its late deliveries were not significantly late, that some portions of these shipments were delivered on time, and that other shipments were delivered early, Marathon has not demonstrated that the agency was required to separately consider such factors beyond what was already accounted for in the ABVM system or that consideration of such factors was required by the RFQ's ABVM evaluation scheme.

untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998); Rotair Indus., Inc., B-276435.2, July 15, 1997, 97-2 CPD ¶ 17 at 4-5.

The protester points out that the ABVM data for Marathon did not include several contract lines that reflected timely deliveries of substantial orders of watches and other items. Marathon maintains that had these contract lines been included in its ABVM data, as they should have been, its past performance score would have increased enough so that S&Y's price premium could no longer be reasonably justified.⁵

DSCR concedes that the contract lines at issue should have been included in Marathon's ABVM data for the rating period but were inadvertently omitted. DSCR has now revised Marathon's ABVM score to reflect this omitted data. According to the agency, Marathon's FSC score would still be close to what its original score was, had the omitted lines been included in the first place. Specifically, Marathon's FSC score increased from [DELETED] to [DELETED] (this includes an increase in Marathon's FSC delivery performance score from [DELETED] to [DELETED]). The agency advises that Marathon's Center score increased from [DELETED] to [DELETED] (this includes an increase in Marathon's Center delivery performance score from [DELETED] to [DELETED]). This adjusted Center score, however, includes not only the adjustment for the inadvertently omitted data, but also ABVM data regarding two additional contract lines from subsequent orders unrelated to the error. As a result, while the exact impact of the erroneous omission is not clear, it cannot exceed the [DELETED]-point increase in the Center score. The agency represents that the contracting officer reviewed Marathon's revised ABVM scores, but after comparing these new scores "to the other rating and the evaluation criteria . . . advised [that] he did not consider that the increases were significant enough to justify a change in his award decision, and that the decision [award to

⁵The agency cites Dayton-Granger, Inc.--Recon., B-279553.3, Oct. 2, 1998, 98-2 CPD ¶ 90 to suggest that this protest ground should be dismissed as untimely because Marathon had a responsibility to contemporaneously check its ABVM scores to ensure the scores' accuracy. As described above, the ABVM system provides vendors with information on the negative delivery data used to compute their scores and a procedure for challenging such negative data. We held in Dayton-Granger that a protest challenging an ABVM score based on the agency's inclusion of erroneous negative data was properly dismissed as untimely where it was not filed prior to the closing time for receipt of offers. Here, however, the agency omitted positive delivery data but the ABVM system apparently does not provide vendors with information on the positive data used to compute their scores or a procedure for bringing to the agency's attention the omission of such data. Accordingly, we do not view this issue as untimely.

S&Y] therefore would remain the same."⁶ Letter from Mr. Stastny to Mr. Goddard 2 (Mar. 26, 1999).

We disagree with Marathon's assertion that the contracting officer's reconsideration of his price/past performance tradeoff should be given no weight because it is a "redetermination prepared in the heat of an adversarial process," as we stated in our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. There is nothing in the record here to support a conclusion that the resulting increase in Marathon's ABVM scores, standing alone, would alter the contracting officer's price/past performance tradeoff decision. Instead, the resulting increase of less than [DELETED] points on a 100-point scale in both Marathon's FSC and Center scores is so small a change that it alone does not compel us to sustain Marathon's protest. See Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 5. Although the almost [DELETED]-point increase in Marathon's FSC and Center delivery performance scores (which are components of the FSC and Center scores, respectively) may not itself be de minimis, both Marathon's revised FSC ([DELETED]) and Center ([DELETED]) delivery performance scores remain below the Center average ([DELETED]) for delivery performance under this FSC. As described above, Marathon's below-average delivery performance was determinative in the contracting officer's price/past performance tradeoff, and since Marathon's delivery performance is still below average, even with its revised ABVM scores, the contracting officer's conclusion that he still would have selected S&Y, rather than Marathon, is reasonable.

The protester also argues that in considering Marathon's revised ABVM scores, the contracting officer failed to take into account information provided by Marathon in a February 10, 1999 agency-level challenge to the inclusion of S&Y's watch on the QPL for alleged nonconformance with specification MIL-W-46374F. According to the protester, the contracting officer's failure to consider this information, which it

⁶In response, the protester complains that it was unreasonable for DSCR to rely on the ABVM data because the ABVM system is materially deficient in that it omitted positive delivery data for Marathon and does not have the capability to take into account all positive data. We need not consider this contention here because DSCR, once informed of the omitted data, proceeded to revise Marathon's ABVM scores accordingly, and the contracting officer reconsidered his tradeoff decision based on this information. Likewise, notwithstanding the technical inability of the ABVM system to record one particular on-time shipment for Marathon, the contracting officer nonetheless considered this shipment along with the other omitted data in reconsidering his tradeoff decision. The agency states that it will flag Marathon's ABVM file so that Marathon is credited for this particular shipment in future ABVM evaluations, and, when feasible, actually include the data for this shipment in Marathon's ABVM score.

states has a direct bearing on S&Y's ability to deliver compliant products on time, renders his revised price/past performance tradeoff unreasonable. This allegation is untimely. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues, and a protester may not introduce a new issue in its comments that it could have raised in its initial submission to our Office. OHM Remediation Servs. Corp., B-274644 et al., Dec. 23, 1996, 97-1 CPD ¶ 4 at 9. The information forming the basis of Marathon's contention was apparently first known to the protester as early as December 23, 1998, the date on which it received a report from a consultant documenting the alleged deficiencies based on testing of one of S&Y's navigator watches. The protester did not convey this information to DSCR until February 10, in its challenge to S&Y's QPL status,⁷ or raise this allegation with our Office until April 7, in its comments in response to the contracting officer's revised tradeoff determination. Since Marathon did not raise the allegation concerning S&Y's QPL status in its protests filed in our Office on January 12 and February 12, despite already knowing the basis for its allegation, and has offered no reason for the delay, we will not consider this new ground of protest.

Finally, Marathon contends that S&Y's ABVM delivery data does not support the agency's conclusion that S&Y "is capable of meeting a production requirement of 2,000 watches." However, in making this assertion, Marathon appears to be challenging S&Y's responsibility, and the RFQ, at 19, advised that "ABVM scores shall not be used to make determinations of responsibility." There is no indication that the agency used the ABVM scores for other than their intended purpose--for comparison of past performance among vendors. The protester also asserts that the contracting officer failed to take into account Marathon's present ability to deliver the solicited watches on time. The contracting officer did not question whether Marathon would be able to deliver the watches within 60 days or conclude that Marathon was not a responsible vendor. Instead, the contracting officer, reasonably and consistently with the RFQ, considered in his tradeoff determination that Marathon's past delivery performance record (as reflected by the ABVM scores) presented an increased performance risk not worth its slightly lower price.

The protest is denied.

Comptroller General
of the United States

⁷Because Marathon's agency-level challenge to S&Y's QPL status was not filed until a month after the issuance of the purchase order at issue here, and did not specifically protest the qualification of S&Y's watch for this purchase order (raising instead a blanket challenge to any potential contract award to S&Y for this type of watch), we do not construe the February 10 challenge as a timely agency-level protest of the issuance of the purchase order to S&Y.