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

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## **Decision**

**Matter of:** Terex Government Programs

**File:** B-404946.3

**Date:** September 7, 2011

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E. Sanderson Hoe, Esq., and Marques O. Peterson, Esq., McKenna Long & Aldridge LLP, for the protester.

David F. Barton, Esq. and Elizabeth Haws Connally, Esq., The Gardner Law Firm, for Kalmar RT Center LLC, an intervenor.

Wade L. Brown, Esq., and Tara Yaldou, Esq., Department of the Army, for the agency. Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

The agency's selection of an equally-rated, slightly higher-priced proposal is unobjectionable where the source selection authority nonetheless identified meaningful distinctions between the proposals warranting payment of a small price premium, and the source selection was consistent with the terms of the solicitation and reasonably based.

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### **DECISION**

Terex Government Programs, of Fredericksburg, Virginia, protests the award of a contract to Kalmar RT Center LLC, of Cibolo, Texas, by the Department of the Army, under request for proposals (RFP) No. W56HZV-10-R-0018, for light capability rough terrain forklifts (LCRTF).

We deny the protest.

The RFP, issued on July 7, 2010, provided for the award of a fixed-price, five-year requirements contract for LCRTF production and related services, and data. The RFP specified that award would be made to the offeror whose proposal was determined to represent the best value to the government considering the following evaluation factors: technical, price, and small business participation. RFP at 100-101. The technical factor was further divided into the following three equally-weighted subfactors: (1) beach operations; (2) helicopter lift; and (3) pallet handling operations. Id. The RFP advised that in determining best value to the government,

technical was the most important factor and was more important than price, which was significantly more important than small business participation. Id. at 101. The importance of price, however, would increase as the non-price factors were determined to be closer in merit. RFP at 101.

With regard to the technical factor, the RFP required offerors to detail their proposed approach to meeting the requirements of the purchase description and to provide substantiating information in this regard. More specifically, offerors were instructed to provide complete and specific technical data documentation and supporting rationale showing how the offered LCRTF would meet the requirements of the purchase description. Id. at 91. Concerning substantiating data, the RFP stated that “validated test and inspection data, which establishes the conformance of the offered configuration to required performance levels, represents the most credible form of substantiating data.” Id.

The RFP closed on August 26, 2010. Four offerors, including Terex and Kalmar, were determined to be within the competitive range. Discussions were opened on October 13, 2010, and closed on January 18, 2011. On March 17, Terex was notified that Kalmar’s proposal had been selected for the award and, on the same date, Terex received a post-award debriefing. Terex then filed a protest with our Office. In response, the Army agreed to take corrective action consisting of reevaluating the proposals and making a new best-value decision. Our Office therefore dismissed the protest on April 21. Following the reevaluation, on May 19, Terex was notified that its proposal had not been selected for award and that Kalmar remained the awardee. Terex then requested a debriefing concerning the Army’s reevaluation, which it received on May 25.

During its two debriefings, Terex learned that its proposal had received the same source selection evaluation board (SSEB) ratings as Kalmar’s proposal, and that Kalmar had offered a higher price, as follows:

	<b>Terex</b>	<b>Kalmar</b>
<b>Technical</b>	<b>Excellent</b>	<b>Excellent</b>
Beach Operations	Good/Low Risk	Good/Low Risk
Helicopter Lift	Excellent/Very Low Risk	Excellent/Very Low Risk
Pallet Handling	Excellent/Very Low Risk	Excellent/Very Low Risk
<b>Price</b>	<b>\$155,614,310</b>	<b>\$161,914,050</b>
<b>Small Business</b>	<b>Excellent</b>	<b>Excellent</b>

See Source Selection Decision Document (SSDD) at 3. Notwithstanding the adjectival ratings, the source selection authority (SSA) concluded in the SSDD that Kalmar’s proposal had presented the most credible substantiating data concerning its design and, in the SSA’s judgment, presented less risk than all other offerors. The SSA further explained that despite the appearance of identical technical and small business ratings between the Terex and Kalmar proposals, there were meaningful

distinctions between the proposals. Specifically, the SSA found that Kalmar had designed and built a LCRTF specifically to meet the purchase description requirements of the RFP, and was therefore able to provide the most credible substantiating data based on that configuration. SSDD at 17. According to the SSA, this distinction was worth the \$6,299,740 price premium of Kalmar's proposal, rendering Kalmar the best value to the government. Id.

Terex filed this protest on May 31. Terex alleges that the SSDD does not support the Army's award decision to Kalmar, that the SSA could not have reasonably justified the \$6.3 million price premium of Kalmar's proposal, and that Kalmar's proposal failed to meet several material requirements of the purchase description of the RFP. Based on our review of the record in this case, we have no basis on which to conclude that the agency's selection decision was unreasonable or otherwise improper.

Section 15.308 of the Federal Acquisition Regulations (FAR) requires, in the context of a negotiated procurement, that a source selection decision be based on a comparative assessment of proposals against all of the solicitation's source selection criteria. The FAR further requires that while the SSA "may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment." Id. Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the SSA. Id. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, nor is there a requirement to quantify the specific cost or price value difference when selecting a lower- or higher-priced proposal for award. Id.; General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. General Dynamics--Ordnance & Tactical Sys., supra; ViroMed Labs., Inc., B-310747.4, Jan. 22, 2009, 2009 CPD ¶ 32 at 6. In reviewing an agency's source selection decision, our Office examines the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

Here, the SSA stated that

Based upon the findings of the SSEB, I have compared the proposals giving appropriate consideration to the evaluation criteria set forth in the RFP and Source Selection Plan. Based upon this comparison of the proposals and a detailed assessment of the strengths, weaknesses, and risks associated with each, I have determined that the Kalmar proposal is the most advantageous and provides the best value to the Government.

SSDD at 11. The SSA explained that Kalmar's proposal provided "the most credible data," and that the data is "clear, concise, relevant and accurate because it was developed directly from the proposed configuration." Id. at 12. With regard to the apparent similarity of the Kalmar and Terex proposals, and the importance of price as set forth in the RFP, the SSA explained, "I recognize that . . . the RFP states, in pertinent part, that 'the closer the Offeror's evaluation are in the non-Price Factors, the more important price becomes in the decision.'" However, the SSA further indicated that

While it could appear as though Kalmar and Terex are 'approximately equal' . . . there were meaningful distinctions between Kalmar and Terex in the Technical Factor. The most meaningful distinction is based on the fact, as stated throughout, that Kalmar built a forklift specifically for the [purchase description] contained in the RFP, and was therefore able to provide the most credible substantiating data based on that configuration. This resulted in a proposal that was superior to Terex's proposal and warrants paying the slight price premium of 4.05%.

Id. at 17.

On review of this record, we see nothing insufficient in the SSA's documentation of his award decision. The SSA's review of the proposals' equal adjectival evaluation ratings, independent reasoning concerning distinctions between the proposals despite their equal ratings, and decision that certain distinctions in Kalmar's proposal warranted the payment of a price premium, are clearly documented and thoroughly explained.

Terex next alleges that the SSA's award decision was unreasonable because the underlying record does not support the SSA's contention that Kalmar's proposal presented the most credible substantiating data, and therefore presented less risk than Terex's proposal. In this regard, the SSA, throughout the SSDD, emphasized the fact that Kalmar had tested a fully-integrated prototype of its proposed LCRTF, built in direct response to the solicitation's purchase description. Testing on the actual configuration of the proposed LCRTF allowed Kalmar to present the most credible substantiating data, in the SSA's view. See SSDD at 12. Kalmar's approach in this regard stood in contrast to that employed by Terex, which proposed to meet the purchase description by modifying an existing commercial forklift, but did not undertake the modifications prior to testing. Thus, Terex's substantiating data was developed from testing of its base commercial forklift, rather than its proposed final configuration.

Terex argues that it was not reasonable for the SSA to conclude that Terex's proposed LCRTF, based on a proven commercial design, presented more risk than Kalmar's "prototype" design.<sup>1</sup> Terex asserts both its own proposal and Kalmar's proposal presented validated test and inspection data based on their proposed "configurations" and should both have been credited with providing "the most credible form of substantiating data" as required by the RFP. Further, Terex contends that the SSA mistakenly believed that Kalmar's data had been developed from direct testing of its prototype, rather than equivalency testing. Terex argues that the performance data for Kalmar's proposed LCRTF was, like Terex's data, based on equivalency testing and mathematical calculations, and therefore did not present an advantage in this regard.

More specifically, Terex asserts that the SSA mistakenly concluded that Kalmar's data was more credible in the two areas of the evaluation in which the SSA identified specific risk in Terex's proposal: the "longitudinal gradeability" and "fording" requirements of the beach operations subfactor of the technical factor. With respect to "longitudinal gradeability," the RFP required offerors to demonstrate that their proposed LCRTF design could

ascend a 45% grade in forward gear range at a speed of not less than 1.5 miles per hour (mi/hr), on a dry concrete surface free from loose material, with the air conditioning at full cool setting, and all lights on, with and without the rated capacity load [4,000 lbs.], using JP-8 fuel.

RFP at 92, 102; Purchase Description at 10. With regard to "fording," the RFP required offerors to demonstrate that their proposed LCRTF design was "capable of operation without degradation of functions in water to a minimum depth of 36 inches, without use of fording aids." RFP at 92, 102; Purchase Description at 16. Contrary to the SSA's conclusion, Terex argues that Kalmar's substantiating data actually demonstrated that Kalmar's LCRTF could not meet the longitudinal gradeability requirement, and offered no advantage under the "fording" requirement.

Based on our review of the record, we see no error in the SSA's understanding of the substantiating data provided by the offerors. While both offerors relied on equivalency testing methods in developing their substantiating data, Kalmar performed this testing on a version of its LCRTF that fully integrated all of the major

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<sup>1</sup> In this connection, Terex repeatedly emphasizes its experience in producing commercial telehandler forklifts and similar LCRTFs for the Marine Corps, in contrast to Kalmar, which had not previously produced a 4,000-6,000 lbs. capacity telehandler forklift or LCRTF. However, as experience was not an evaluation criteria for award under this RFP, the agency had no basis to consider Terex's asserted experience.

systems proposed for its final production vehicle. In contrast, Terex performed its testing on a base model commercial forklift that did not incorporate up to 44 proposed changes required to modify the commercial vehicle to meet the purchase description requirements, including modifications of major systems such as the replacement of the engine, transmission, and axles. This distinction weighed heavily in the SSA's consideration of the two offerors' substantiating data and risk, especially in the "longitudinal gradeability," and "fording" areas. See SSDD at 12.

In the "longitudinal gradeability" area, Kalmar's substantiating data was based on a [DELETED] test using [DELETED]. Kalmar Beach Operations Reevaluation, Attachment 9. After applying [DELETED], the calculations demonstrated [DELETED], which the SSA determined, from an engineering point of view, to present a low risk that Kalmar's proposed LCRTF would not meet the "longitudinal gradeability" requirement. Id., SSDD at 13. The SSA also noted that Kalmar's test was performed using [DELETED], such that Kalmar had the ability to [DELETED]. Id. For "fording," Kalmar identified [DELETED]. Kalmar Proposal, Volume 2, at 24.

Terex's substantiating data for "longitudinal gradeability" was based on [DELETED]. Terex Beach Operations Reevaluation, Attachment 1. Because its commercial forklift [DELETED], Terex's test was performed with a [DELETED]. Terex Proposal, Volume 2, at 26. The SSA considered this substantiating data to be credible and to reflect a low risk that Terex's proposed LCRTF would not meet the "longitudinal gradeability" requirement. However, the SSA noted that the testing was performed on a commercial vehicle that did not include significant proposed component changes and that, if during testing of the final configuration Terex's LCRTF is unable to meet the requirements, Terex did not have the ability to reduce its rated load capacity. SSDD at 13. The SSA concluded that, "[t]herefore, the risk is higher with Terex's proposal," in comparison to Kalmar. Id. For "fording," Terex [DELETED]. Terex Proposal, Volume 2, at 32. The SSA concluded that "Terex discussed [DELETED] but did not provide any credible form of substantiating data regarding [DELETED]." SSDD at 14.

Again, in this context, we have no basis to question the SSA's judgment that Kalmar's substantiating data, derived from equivalency tests performed on a fully-integrated version of its proposed LCRTF, was more credible and that its proposal therefore presented less risk than Terex's proposal, which presented substantiating data derived from equivalency tests performed on an unmodified commercial forklift. The evaluation of technical proposals is generally a matter within the agency's discretion, and our Office will not disturb an agency's judgments regarding the relative merits of competing proposals absent a showing those judgments are unreasonable or inconsistent with the RFP's evaluation criteria. See, e.g., METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4. Terex has made no such showing here. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Finally, Terex alleges that, based on product literature produced by Kalmar following the award, and later obtained by Terex, Kalmar's proposed LCRTF will not meet several purchase description requirements set forth in the RFP. For example, Terex alleges that Kalmar's proposed LCRTF will not meet requirements related to fuel tank capacity, floatability, and travel speed. Terex's allegations, based on draft commercial product literature, are speculative and fail to state a valid basis of protest. Moreover, while the RFP required the awardee to deliver an end item that met all requirements of the purchase description, it did not provide for evaluation of compliance with purchase description requirements other than those directly related to the beach operations, helicopter lift, and pallet handling operations requirements. Instead, the RFP merely required offerors to submit "an affirmative statement that the Offeror proposes to meet all the requirements of the . . . Purchase Description." RFP at 91. In any event, our review of Kalmar's proposal indicates that it did provide substantiating data to demonstrate compliance under each of the challenged purchase description requirements. See Kalmar Proposal, Volume 2, at 59, 86-87, 111.

The protest is denied.

Lynn H. Gibson  
General Counsel