



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hi-Shear Technology Corporation

File: B-261206

Date: August 31, 1995

Peter B. Jones, Esq., Jones & Donovan, for the protester.

Nancy O. Dix, Esq., and Mary E. Shallman, Esq., Gray Cary Ware & Freidenrich, for Teledyne Ryan Aeronautical, McCormick Selph Electronics, an interested party.

David M. Hill, Esq., and Kathryn M. Burke, Esq., Department of the Air Force, for the agency.

C. Douglas McArthur, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation required contracting officer to consider whether the need for timely delivery of contract items—recovery sequencers for F15/F16 aircraft—justified paying a price differential for services of a participant in the agency's Blue Ribbon Contractor (BRC) program, contracting officer reasonably concluded that the record provided no basis to select the protester's higher-priced offer, despite its status as a BRC, over the awardee's lower-priced offer.

DECISION

Hi-Shear Technology Corporation protests the award of a contract to Teledyne Ryan Aeronautical, McCormick Selph Electronics, under request for proposals (RFP) No. F41608-95-R-10105, issued by the Department of the Air Force for aircraft recovery sequencers. Hi-Shear, a participant in the Air Force Materiel Command's (AFMC) Blue Ribbon Contractor (BRC) program, contends that the agency did not consider the protester's BRC status in its selection decision, contrary to solicitation provisions.

We deny the protest.

On March 17, 1995, the agency issued the solicitation for award of a fixed-price contract for 296 F-15/16 recovery sequencers, which provide electrical impulses at a timed rate to different components of the aircraft ejection seat, during what the agency refers to as "an unplanned departure" from the aircraft. The solicitation

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advised offerors that award would be made in accordance with the AFMC BRC Program. See AFMC Federal Acquisition Regulation Supplement (AFMC FARS), Part 5315.605-90. This program, which applies to spare parts acquisitions, recognizes that responsible contractors have "varying degrees of quality and delivery performance," and permits the contracting officer to consider, in addition to price, an offeror's past quality and delivery performance and overall cost in making an award decision. *Id.* Factors to be considered in determining whether award to other than the low-priced offeror is warranted include: price, price-related factors including required delivery schedule; complexity of items; criticality of items; size of order (quantity, dollar value, contractor's plant capacity); need for first article; absolute dollar difference; new contractor's past quality and delivery performance; and overall cost to the government.

The agency received two offers on March 29, one from the protester and one from Teledyne. Teledyne offered a slightly lower price—\$1,735,413 versus Hi-Shear's price of \$1,750,000.¹ Although Hi-Shear was a BRC, the contracting officer learned that Teledyne was producing the same sequencers for McDonnell Douglas, had excess capacity to deliver an additional 30 per month, and already had the long-lead time items in-house. By contrast, despite its good performance record, Hi-Shear did not have extra long-lead time items and, in the short term, might not be able to meet the urgent requirements; further, the Defense Plant Representative's Office noted that Hi-Shear would have to hire more assemblers, which would have a short term impact on quality. Both offerors were qualified sources, and the contracting officer considered both offerors equally capable of manufacturing complex and critical items; with long lead time items on hand, there appeared little risk in selecting Teledyne for award. On April 24, 1995, after concluding that there was no added value in making award to Hi-Shear, the contracting officer made award to Teledyne, the low offeror. This protest followed.

Hi-Shear argues that the Air Force's award decision was not consistent with the evaluation factors listed in the solicitation. Specifically, the solicitation provided that the BRC program would be more important than price in selecting a contractor, and in the view of the protester did not allow the contracting officer discretion to make award to other than the BRC contractor, absent an overwhelming price difference. The protester further argues that the agency improperly considered risk in its evaluation, without revealing risk as an evaluation factor and that the determination not to award to Hi-Shear was essentially a finding

¹Hi-Shear's price was conditioned on use of housings from condemned sequencers. The agency states that it would have approved this condition had it made award to Hi-Shear, but would have had to assign some value in the price evaluation to reflect the advantage to Hi-Shear. The agency now estimates that application of such a factor would have increased Teledyne's advantage by \$27,000.

of nonresponsibility that should have been referred to the Small Business Administration.

In reviewing protests against an agency's selection decision, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes or regulations. Advanced Env'tl. Technology Corp., B-259252, Mar. 20, 1995, 95-1 CPD ¶ 149. The BRC program used here allows contracting officers to consider differences between offerors with respect to quality and the ability to make timely deliveries in making an award decision. Hi-Shear Technology Corp., B-258814.2, May 17, 1995, 95-1 CPD ¶ 250. Contractors who have demonstrated dependable quality and delivery performance on Air Force spare parts contracts during the past year may apply for the BRC list maintained by the agency. See NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

As a preliminary matter, we note that the situation here presents a deviation from the expectations underlying the AFMC BRC program. Generally, the BRC program anticipates that award to a BRC contractor—by virtue of its standing as a proven performer in the past—will be in the government's best interest even when such award is made at a higher price. Here, however, the agency concluded that despite the relatively small price differential there was no need to pay a differential whatsoever because the offeror with the lowest price appeared to have an equally good likelihood of making on time deliveries. According to the Air Force, in this situation, while it was permitted to award based on considerations other than price, neither the language of the solicitation nor the underlying regulations required it to do so.

We agree. Under the BRC program the contracting officer may select an offeror on the basis that it is a BRC and that paying a price differential to award to a BRC is in the government's best interest. The underlying regulations, however, also anticipate situations, like here, where the agency may elect not to award to a BRC contractor and to instead award to a lower-priced, non-BRC offeror. See AFMC FARS § 5315.605-90(h)(9)(ii). Such a decision requires a written determination that award to the BRC at a higher price is not in the government's best interest. *Id.*

The record before us shows that even while the solicitation indicated that timely delivery was of critical importance to the agency, the agency was unable to conclude that the probability of on-time delivery from Hi-Shear was any greater than for Teledyne, considering the relative workloads of the two offerors—*i.e.*, Teledyne's excess capacity and the availability of long-lead time items versus Hi-Shear's commitments under another contract for sequencers. This determination was memorialized in writing by the contracting officer, as required by the BRC program regulations, and the protester provides us with no basis to conclude that this decision was unreasonable. In this regard, we note that Hi-Shear does not question the agency's conclusion that Teledyne was equally capable of making

complex and critical parts, nor does it argue that the requirements for recovery sequencers justified payment of a price premium to obtain the services of a BRC.

With respect to Hi-Shear's contention that the agency improperly considered risk in the evaluation, even though risk was not a named evaluation factor, we point out that the contracting officer's statement that risk of late delivery outweighed any added value from making an award to Hi-Shear is consistent with the solicitation language that requires a best value determination before paying a higher price to a BRC. Consideration of risk is inherent in the evaluation of proposals. Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251. Further, the contracting officer did not conclude that there was a risk of slippage on the instant contract but that there was a risk of slippage under the ongoing contract, which was of equal urgency.

Finally, Hi-Shear is mistaken when it contends that the agency was required to refer this matter to the Small Business Administration (SBA) under the certificate of competency (COC) procedures before it could award to Teledyne. As described above, Hi-Shear was not found nonresponsible, but was instead found to offer no benefit greater than Teledyne to justify selection of Hi-Shear's higher-priced offer under the BRC program. Since Hi-Shear was not the low-priced offeror, and was not found nonresponsible, the SBA's COC procedures have no application here.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel