



# Decision

**Matter of:** SSI Technology, Inc.

**File:** B-414204.3

**Date:** September 12, 2017

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## DIGEST

1. Protester's challenge to the agency's use of best-value procedures is denied where, although the solicitation does not use the phrase "best value" in describing evaluation procedures, it sets forth evaluation criteria that effectively require a best-value analysis.
2. Agency's best-value tradeoff decision was reasonable where protester's past performance history was poor and the contracting officer concluded that it was worth paying a higher price and accepting a longer delivery time in order to ensure timely contract performance.

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## DECISION

SSI Technology, Inc. (SSI), a small business, of Sterling Heights, MI, protests the award of a purchase order to Phoenix Trading, Inc. (PTI), of Rockville, MD, under request for quotations (RFQ) No. SPE7M5-16-U-0429, issued by the Defense Logistics Agency, Land and Maritime (DLA), for liquid fuel water separators. SSI asserts that the awardee cannot supply the product of an approved source, as required by the RFQ, and that the agency's best-value source selection was improper.

We deny the protest.

## BACKGROUND

The RFQ, which was issued on August 12, 2016, sought quotations for the supply of 249 liquid fuel water separators identified by National Stock Number 4330-00-410-1212. RFQ at 4-5. The solicitation identified the following approved sources for the item:

SSI Technology (51819) P/N FWS2000

Ban Mah (60658) P/N F-0301

RFQ at 5.<sup>1</sup>

The RFQ incorporated by reference the terms and conditions set forth in the DLA Master Solicitation for eProcurement Automated Simplified Acquisitions (Part 13) (Master Solicitation). RFQ at 1. With regard to source selection, the Master Solicitation provides:

If the requirement is evaluated manually,<sup>2</sup> price, delivery, and past performance will be considered in accordance with the terms in the solicitation. Since delivery is an evaluation factor, there may be an evaluation preference for quotes/offers of fewer delivery days than the number of delivery days requested by the Government.

AR, Tab 4, at 5.

Seven quotations were received in response to the RFQ. AR, Tab 7, Abstract of Quotes. SSI quoted a unit price of \$305 with delivery within 180 days. CO Report at 2. SSI quoted as a manufacturer, offering to provide its own product. Id. PTI quoted a unit price of \$409, with delivery of 350 days. PTI quoted as a dealer, offering to provide a product manufactured by Ban-Mah/Dan Mar.<sup>3</sup> Id.

On December 13, 2016, SSI filed a protest with our Office, challenging award of the purchase order to PTI. On December 21, 2016, DLA advised our Office that it had determined that its award decision was not adequately documented; consequently it decided to take corrective action consisting of reevaluating quotations and making a new award decision. Id. On January 10, 2017, we dismissed the protest as academic. SSI Technology, Inc., B-414204, Jan. 10, 2017 (unpublished decision).

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<sup>1</sup> While the RFQ initially lists the name of the second approved source as Ban Mah, it subsequently lists the name as Dan-Mar Inc DBA Danmarco. RFQ at 5. The contracting officer (CO) points out that the CAGE Code, 60658, and part number, F-0301 listed for Ban Mah and Dan Mar are identical. CO Report at 1, n.1.

<sup>2</sup> Quotations here were reviewed manually. CO Report at 2, citing Agency Report (AR), Tab 7, at 1.

<sup>3</sup> While in its agency report, DLA redacted the identity of the manufacturer of the product offered by PTI, it subsequently identified Dan Mar as PTI's "quoted manufacturer." Agency Response to Protester's Comments at 2.

After reevaluating, the CO again decided to award to PTI, finding that its quotation represented the best value to the government. CO Report at 3. On February 17, SSI filed another protest with our Office, challenging the award decision. On March 3, DLA advised us that it would take corrective action by again reevaluating and making a new award decision. On March 7, we dismissed the protest as academic. SSI Technology, Inc., B-414204.2, Mar. 7, 2017 (unpublished decision).

Based on the subsequent reevaluation, the CO again decided to award to PTI, finding that its quotation represented the best value to the government. In this connection, the agency determined that while SSI had quoted a lower price and shorter delivery period than PTI, the protester's "very poor past performance history, which include[d] a PPIRS [Past Performance Information Retrieval System] score of 0 and indicate[d] in part that in the past year, it [had] delivered only 23.8% of its DLA-awarded CLINs [Contract Line Item Numbers] by their due dates," resulted in concern that SSI's quotation "does not represent a time frame in which [SSI] can actually perform." AR, Tab 18, Simplified Acquisition Award Documentation at 3. In contrast, PTI's past performance history indicated a high degree of timely performance, resulting in "full confidence" that PTI would "perform in accordance with its quoted delivery time." Id. The agency thus concluded that "[r]ather than take a risk with [SSI's] cheaper price and receive a 23.8% assurance that the liquid fuel water separators would be delivered in accordance with its quoted time," it was "worth paying a \$104.00 premium per unit" for PTI's high degree of timely performance. Id.

The CO notified SSI of the award to PTI on June 1, 2017. AR, Tab 17. This protest followed on June 5, 2017.

## DISCUSSION

In its June 5 protest, SSI argued that any representation that PTI is proposing an exact product is false. Protest at 4. In the foregoing connection, the protester represents:

PTI has no agreement with SSI as an approved source to manufacture the Control Modules and, due to the long delivery time awarded to PTI, the Protestor [sic] does not believe PTI has an agreement with the other approved source.

Id.

The CO responded that PTI had, in fact, offered a qualified "exact product," explaining as follows:

As SSI acknowledges, and as the item description makes abundantly clear, there were two approved sources and so, Phoenix Trading's quote, based on product from a listed approved source, was indeed properly considered to be "exact product." Tab 1 at 3, Tab 3 at 5.

CO Report at 6. Although the protester argued in response that “if PTI had actually proposed as a dealer for the only other approved source, i.e., Ban Mah,” there was no need for the agency to have redacted from the agency report the identity of the manufacturer of the product quoted, the protester did not offer any evidence to refute the agency’s representation. Comments at 2.<sup>4</sup>

In its comments on the agency report, SSI noted that the record revealed that Ban Mah/Dan-Mar had “signed up to become Joint Certification Program (JCP) – certified so that the award could be made to one of its dealers.” Protester’s Comments at 2, citing AR, Tab 18, at 1. The protester argued that this meant that at the time PTI submitted its quotation, it did not have an agreement with an approved source – and, as a result, PTI’s quotation should have been rejected as unacceptable.

The RFQ included the following provision pertaining to JCP certification:

Distribution of the technical data and eligibility for award are limited to those suppliers qualified through JCP certification, or to those licensed by either the Departments of State or Commerce, or to foreign suppliers pursuant to international agreements.

RFQ at 4. While the protester’s argument is premised on the assumption that the RFQ required that a vendor’s supplier be JCP-certified at the time the vendor submitted its quotation, we find no provision in the RFQ that establishes this requirement and the protester points to none. JCP compliance is not identified in the RFQ as a requirement for submission of a quotation, but rather as a requirement for access to technical data and eligibility for award. Id. Accordingly, under the RFQ, a vendor need only demonstrate JCP compliance on the part of its supplier at award, not at quotation submission. This protest ground therefore is denied.

SSI also challenges the agency’s best-value tradeoff decision, asserting first that the RFQ does not provide for a best-value tradeoff decision. Protest at 4. We find this argument unpersuasive. Although the RFQ did not explicitly provide for award on a best-value basis, it effectively required a best-value analysis by providing that award would be based on “price, delivery, and past performance.” Master Solicitation at 5.

SSI also asserts that the best-value decision made by the CO was “unreasonable and without a rational basis.” Protest at 4. The protester argues in this connection:

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<sup>4</sup> We also note, as pointed out in footnote 3 above, that while the agency redacted from the agency report information identifying the manufacturer of the item offered by PTI, the agency subsequently confirmed that Dan-Mar was the manufacturer of PTI’s item.

Further evidencing the unreasonableness of the Government's best value determination of PTI's offer is the fact that PTI quoted and was awarded its alternate product at a price 34% more costly than the exact product proposed by the Protestor [sic]. Not only was PTI's quotation substantially higher priced than Protestor [sic], PTI proposed and was awarded a delivery date that was 145 days after the delivery date required by the Government. In stark contrast, SSI's quotation was a compliant lower priced offer for an exact product that it has previously produced for the Government.

Protest at 4. We also find this argument unpersuasive. Source selection officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results, subject only to the tests of rationality and consistency with the evaluation criteria. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13. Here, the CO recognized that SSI had quoted a lower price and shorter delivery period than PTI, but nonetheless concluded that due to its poor past performance, its quotation did not represent the best value to the government. The protester has not shown that this determination was unreasonable or inconsistent with the stated evaluation criteria.

The protest is denied.

Susan A. Poling  
General Counsel