



Decision

Matter of: Pride Mobility Products Corporation

File: B-405371

Date: October 25, 2011

Ted Raquet for the protester.

Maura C. Brown, Esq. and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Protest that specifications in a negotiated procurement that require power wheelchairs to meet certain safety standards and to be transportable by a passenger vehicle hitch are mutually exclusive is denied where protester provides no evidence that the specifications are impossible to meet and fails to show that the agency's judgment is unreasonable.

DECISION

Pride Mobility Products Corporation of Exeter, Pennsylvania, protests the terms of request for proposals (RFP) No. VA-797-11-RP-0097, issued by the Department of Veterans Affairs (VA) for power wheelchairs.

We deny the protest.

BACKGROUND

The RFP, issued as a commercial item acquisition, provides for the award of a fixed-price requirements contract for compact and standard power wheelchairs (CPW and SPW, respectively) with various optional equipment. RFP at 6, 17, 62; RFP amend. 1, at 3-4; RFP amend. 10, at 3. Detailed specifications were provided that require, among other things, various user safety features and that each wheelchair be transportable via a passenger vehicle hitch. See RFP at 6; RFP amend. 1, at 2. The RFP provides consumer and environmental profiles in this regard for each type of wheelchair describing the intended users and their mobility needs. RFP at 6. The

wheelchairs must also be approved by the Food and Drug Administration (FDA). RFP amend. 1, at 2.

With regard to the user safety features, the RFP requires that the wheelchairs meet specified safety standards developed by the Rehabilitation Engineering Society of North America (RESNA).¹ See RFP at 82, 85-86; RFP amend. 1, at 2, 7. As relevant here, the wheelchairs must comply with the design, performance, identification, labeling, instructions, warnings, and disclosure provisions of RESNA standard WC-19, Wheelchairs Used as Seats in Motor Vehicles. RFP at 82-85. Similar to relevant requirements for automobile seatbelts and child safety seats, WC-19 standards require that wheelchairs have, among other things, anchored belts and secure attachment points so that the wheelchair is properly secured and the user is properly restrained when seated on the wheelchair while riding, for example, on a public bus. See id. at 85-86; Agency Report (AR), Tab 4, RESNA's Position on Wheelchairs Used as Seats in Motor Vehicles, at 6.

With regard to the wheelchairs' transportability, the RFP requires that each wheelchair type be transportable using a lift and vehicle hitch attached to a user's private car. See RFP at 6. More specifically, the CPW must be transportable using a Class 2 passenger vehicle hitch, and the SPW must be transportable using a Class 3 passenger vehicle hitch. Id.

The RFP instructs offerors to submit separate business and technical proposals. Id. at 54-56. With regard to technical proposals, offerors are required to submit, for each proposed wheelchair model, a complete RESNA test report confirming that the power wheelchair complies with the RFP's specifications.² See RFP amend. 1, at 7. The RFP also requires offerors to submit descriptive product literature that identifies the wheelchair model, type, and component items and clearly shows compliance with the requirements listed in the RFP's schedule. Id.; see Schedule. Offerors must also submit documentation verifying FDA approval of their proposed wheelchairs. RFP amend. 1, at 7.

Offerors are advised that the agency will first assess, on a pass/fail basis, whether their proposed wheelchairs meet the minimum specifications, safety features, and required functions, as well as whether the offeror submits the required RESNA test reports and documentation of FDA approval. See RFP at 63. The RFP states that

¹ RESNA is an independent, professional society for individuals and organizations interested in assistive technology for persons with disabilities. See www.resna.org. According to the RFP, RESNA tests and standards for power mobility devices are developed by industry, research, and clinical experts. See RFP at 82.

² The RFP directs offerors to obtain relevant testing information directly from RESNA and provides contact information for that organization. RFP at 82.

failure to comply with the minimum specifications, safety features, and required functions, or failure to submit RESNA test reports, will result in the offer being summarily rejected. Id. After the agency completes its initial review of business and technical proposals, offerors will be required to submit samples for further evaluation. See id. at 58.

The RFP states that award will be made to the offeror whose proposal is found most advantageous to the government, price and other factors considered. Id. at 62. The RFP identifies the following evaluation factors: technical, quality/past performance, small business participation, and price. Id. at 63, 65; RFP amend. 1, at 8. Under the technical factor, the RFP identifies four subfactors: RESNA report quality, performance, ease of use, and warranty; the RFP states that the technical subfactors are listed in descending order of importance, except that performance and ease of use are of equal importance. RFP amend. 1, at 8.

With regard to the technical evaluation factor, the RFP states that the agency will perform a subjective technical evaluation of each sample wheelchair. Id. The RFP advises offerors that the agency will evaluate the wheelchairs under varied conditions both indoors and outdoors on multiple surfaces, terrains, and slopes, and may consider all aspects of the devices under the stated technical subfactors. Id. With regard to the RESNA report quality subfactor, the RFP states that the evaluation will include, but not be limited to, the wheelchairs' conformance with RESNA test protocols and documentation standards, as well as the recency and objectivity of the RESNA tests.³ See id. With regard to the performance subfactor, the evaluation will include, but not be limited to, the wheelchairs' stability, maneuverability, responsiveness, and fabrication quality. Id. With regard to ease of use, the evaluation will include, but not be limited to, the wheelchairs' ergonomic design as related to the operation, adjustment, and maintenance of all required and optional features. Id.

DISCUSSION

Pride Mobility contends that there is a "serious design conflict" in the RFP's requirement that wheelchairs be both transportable by a hitch and meet WC-19 safety standards, arguing that these requirements are "mutually exclusive."⁴ Protest

³ The RFP states that the agency will assign higher evaluation ratings to RESNA tests performed at independent testing facilities than to testing performed at the wheelchair manufacturer's facility and, in this regard, provides a list of RESNA affiliated testing facilities See RFP at 82-83.

⁴ The protester suggests that the agency consider separate wheelchair models addressing different user priorities. The protester also believes that the numerous RFP amendments reflect the agency's uncertainty over its wheelchair priorities and
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at 2; Comments at 1. The protester maintains that transportability using a hitch requires a design emphasis on decreasing a wheelchair's overall weight, while compliance with the WC-19 safety standards (which the protester describes as crash worthiness) requires a design emphasis on increasing a wheelchair's overall weight. See id. In this respect, the protester provides data regarding maximum weight loads for various car models and contends that the wheelchairs cannot exceed a certain weight given the added weight of the vehicle hitch and wheelchair lift. See Comments at 2-5. For example, according to the protester, the required CPW must weigh less than 300 pounds to ensure that it can be safely transported using a passenger vehicle equipped with a Class 2 hitch. Id. at 5.

The VA asserts that Pride Mobility's protest reflects only its disagreement with the wheelchair specifications. AR at 6. In this respect, the agency maintains that the protester has presented no evidence that the safety and transportability requirements are mutually exclusive and the agency points out that in response to the RFP it has received a number of offers that can presumably meet the specifications.⁵ See AR at 6-7. The agency also argues that it can properly specify requirements based on the needs of veterans and that its medical judgments in that regard are entitled to deference. See id. at 8-10, citing, inter alia, GlaxoSmithKline, B-291822, Apr. 7, 2003, 2003 CPD ¶ 77 at 5 (matters involving agency medical judgments and policies are inappropriate for review under GAO's bid protest function). According to the agency, veterans often transport their power wheelchairs using an external hitch and wheelchair lift attached to personal cars, but in other circumstances veterans are transported in public and other vehicles while seated in a wheelchair. Declaration of Prosthetics Clinical Coordinator, at 2. Moreover, the agency states that the RFP's specifications were developed by a team of VA subject matter experts, including physical and occupational therapists, psychiatrists, and technical, prosthetics, and sensory aid specialists, as well as representatives for patient safety and from veteran service organizations.⁶ See Contracting Officer's Statement at 1.

A contracting agency has the discretion to determine its needs and the best method to accommodate them and the responsibility for drafting proper specifications that

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complains that the amendments promote confusion among the offerors and will impact the quality and responsiveness of proposals. See Protest at 2.

⁵ The VA states that it has not opened the proposals pending this protest. See AR at 7, n. 3.

⁶ The agency also disputes the protester's data and weight load calculations and suggests that there are commercially available, WC-19 compliant wheelchairs, including models sold by Pride Mobility, that are well within weight limits. See Declaration of Prosthetics Clinical Coordinator at 2-3.

reflect the government's needs is the contracting agency's. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 3; Instrument Control Serv., Inc.; Science & Mgmt Resources, Inc., B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. However, those needs must be specified in a manner designed to achieve full and open competition. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5. Where a protester alleges that performance is impossible, we will not substitute our judgment for that of the agency or sustain the protest in the absence of clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. Cardion Elec., B-218566, Aug. 15, 1985, 85-2 CPD ¶ 172 at 8; Instrument Control, *supra*. Where a requirement reflects an agency's minimum needs, the fact that the protester will be unable to meet the requirement does not establish an impropriety. John F. Kenefick Photogrammetric Consultant, Inc., B-238384, May 4, 1990, 90-1 CPD ¶ 452 at 5.

The protester here has not shown that the VA's requirement for wheelchairs that are both transportable by a hitch and meet specified safety standards is unreasonable. Moreover, the protester fails to provide any clear and convincing evidence that the RFP's wheelchair specifications are, in fact, impossible to meet. For example, although the protester provides data regarding maximum weight loads and contends that the required CPW must weigh less than 300 pounds, the protester provides absolutely no evidence showing that an offeror could not, in fact, meet such a weight requirement.⁷ Indeed, the protester concedes that wheelchair lifts vary in weight and lifting capacity, and does not otherwise dispute the agency's assertion that there are commercially available, WC-19 compliant wheelchairs--including models sold by the protester itself--that are within wheelchair weight limits. *See* Comments at 5.

Although Pride Mobility disagrees with the VA's judgment concerning its wheelchair requirement and how to accommodate veterans' needs, the protester has not showed that the agency's requirements are unreasonable or impossible to meet. *See* Cardion Elec., *supra*; Instrument Control, *supra*. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them

⁷ Rather than presenting evidence to support its argument that no offeror could meet the weight requirement, the protester suggests that our Office independently verify the protester's arguments. Our Office does not conduct investigations as part of our bid protest function. Charleston Marine Containers, Inc., B-283393, Nov. 8, 1999, 99-2 CPD ¶ 84 at 4.

does not show that the agency's judgment is unreasonable. Exec Plaza, LLC, supra. This is especially true in procurements such as this which involve an agency's judgment as to its medical needs. CardioMetrix, B-242678, B-242678.2, May 17, 1991, 91-1 CPD ¶ 477 at 2.

The protest is denied.

Lynn H. Gibson
General Counsel