

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Aviation Management Inc., LLC
Under Solicitation No. DTFAWN-15-Q-00108

Docket No.: 15-ODRA-00739

Appearances:

For the Protester: Michael J. Erickson, President

For the FAA Service Center: Don Bobertz, Esq.

Solicitation DTFAW N-15-Q-00108 (“Solicitation”) sought competitive quotations for “a total of 4 Signal light Guns (4) each model 901 with charger model 951C with (4) spare batteries and (4) spare lamps.” *Agency Response* (“AR”) Tab 1, at 1. After award of a purchase order to another offeror who has not intervened, Aviation Management Inc., LLC (“AMI”) filed this protest alleging: (1) the Western Area Service Center (the “Center”) “illegally tailored” the specification such that only the ATI Avionics Model 901 Light Gun and associated equipment could meet the requirement; and (2) the Center erred in its evaluation of AMI’s quoted equipment and price. *Protest* at 1.

On October 14, 2015, the Office of Dispute Resolution for Acquisition (“ODRA”) dismissed the first ground of the Protest as an untimely challenge to the terms of the Solicitation, which by regulation had to be filed prior to the deadline for quotations. *See Decision on Motion to Dismiss Protest as Untimely and Meritless* (October 14, 2015).¹ The ODRA did not dismiss the second

¹ *Decision on Motion to Dismiss Protest as Untimely and Meritless* (October 14, 2015) is incorporated by reference. Familiarity with that Decision is presumed.

ground of the Protest, and set an adjudication schedule. *Id.* After receiving the Agency Response and AMI's Comments,² the record closed on October 30, 2015.

For reasons described below, the ODRA recommends that the Protest be denied.

I. Jurisdiction and Standard of Review

AMI submitted a timely quotation that the Center evaluated, but did not select. *AR* Tabs 1-3. The ODRA therefore finds that it has jurisdiction over the Protest. 49 U.S.C. § 40110(d)(4) (2012); 14 C.F.R. § 17.1 (2015). The ODRA also finds that this Protest falls within the final decision authority delegated to the Director of the ODRA. AMI's quotation and the awardee's quotation were well below the \$20 million threshold set by the FAA Administrator's delegation of final decision authority to the Director of the ODRA. *AR* Tab 2 at 4 (AMI quotation); Tab 3 (non-redacted) at 2; and *Delegation of Authority*, March 19, 2014.³

AMI, as the protester, bears the burden of proof, and must demonstrate by substantial evidence that the challenged decision lacked a rational basis, was arbitrary, capricious or an abuse of discretion, or otherwise failed in a prejudicial manner to comply with the Acquisition Management System ("AMS"). *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsystech, Inc.*, 09-ODRA-00508). Consistent with the Administrative Procedures Act, 5 U.S.C. §§ 554 and 556 (2012), which applies to ODRA adjudications, the phrase "substantial evidence" means that the ODRA considers whether the preponderance of the evidence supports the challenged agency action. Where the record demonstrates that the challenged decision has a rational basis and is not arbitrary, capricious or an abuse of discretion, and is consistent with the AMS and the underlying solicitation, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials. 14 C.F.R. § 17.19(m) (2015); *Protest of Potter Electric Co.*, 13-ODRA-00657.

² AMI styled its Comments as a "Rebuttal," which it amended the same day as originally filed. The ODRA uses the regulatory term "Comments" throughout these Findings and Recommendations to refer to the amended Rebuttal.

³ *Delegation of Authority*, 79 Fed. Reg. 21,832 (April 17, 2014). Under this delegation, the Director has authority to issue final agency decisions in "a bid protest concerning an acquisition having a minimum dollar value, including any options years, of not more than twenty million dollars (\$20,000,000);" *Id.*

II. Findings of Fact and Conclusions of Law

Despite AMI's understanding that the Solicitation sought quotations for four sets of ATI Avionics light guns and associated equipment,⁴ AMI quoted prices for another manufacturer's equipment, and provided an unsolicited option for four additional chargers. *Compare AR Tab 1 at 1 with Tab 2 at 4.* AMI challenges the evaluation of its optional chargers as part of its quotation, stating:

[The Center] asked for 4 Light-Guns, 4-Batteries; 4-Lamps; 4-Chargers. [The Center] did NOT ask for 8-Chargers. [The Center] cannot create new Specifications and Requirements after-the-fact, just to eliminate competition from [the] favored Vendor ... who is higher priced.

That is very unfair of [the Center] to impose this requirement upon our bid at this time. We Protest this point.

Protest at 1. To paraphrase, AMI challenges the Center's consideration of AMI's unsolicited option for chargers, which the Center deemed necessary to find AMI's product technically acceptable. AMI, however, has provided nothing to establish that the evaluation was irrational or not in accordance with the AMS *regarding issues unrelated to the terms of the Solicitation*.⁵

The Contracting Officer explained that his staff evaluated AMI's quotation as proposing an equal product to the specified ATI Avionics models.⁶ The AMS Guidance directs that an acceptable "equal product" "must have the same salient characteristics as a brand product." *AMS Guidance*

⁴ The Protest is the final message of an email exchange between the Contract Specialist and AMI's President. The email exchange reveals that on April 29, 2015 – over a week before the closing date of May 8, 2015 – AMI asserted that the Center had issued a "tailored" specification that "clearly gives [an] unfair and anti-competitive advantage to the ATI Avionics Model-901 Light Gun." *Protest at email dated 4/29/2015, "Subj: Re: FAA – Purchase for 4-battery powered Signal Light Guns; Protest Lack of OR EQUAL."*

⁵ Having already partially dismissed as untimely the aspects of this protest challenging the terms of the Solicitation, the ODRA will not delve into the many paragraphs of single-spaced arguments that challenge the agency's brand name specification (*Comments at ¶¶ 2 and 3*), the agency's own assessment of its needs (*Comments at ¶¶ 4-6, 9, 10, 12, 14-25, and 28*), or the failure to publish in the Solicitation the salient characteristics for evaluation, as required by *AMS Guidance T3.2.2.8 A.5.b(2)* (*Comments at ¶¶ 29-31*).

⁶ The Contracting Officer believes that AMI's unit should have been eliminated simply for failing to offer the model 901 light gun and 951C charger. *AR Tab 4, at 2, ¶ 4.* The actual evaluation, however, was conducted on a brand name or equal basis, not a brand name-mandatory basis. *Id.*; see *AMS Guidance T3.2.2.8 A.5.*

T3.2.2.8 A.5.b. Now that the full record is before the ODRA, it is clear that the evaluation rested upon the simultaneous charging feature as the salient characteristic of the brand model.

The Model 951C charger is capable of simultaneously charging one battery attached to the Model 901 light gun and one spare battery. *Compare AR Tab 4, Contracting Officer's Decl. at 2, ¶ 4, with AMI Comments Exh. 3 (Model 951C specifications) and Exh. 5 (light gun comparison table).* In comparison, AMI's quoted charger energizes only one battery at a time. *AMI Comments at 7, ¶ 27; AR Tab 4, Contracting Officer's Decl. at 2, ¶ 5.* In order for AMI's unit to charge two batteries simultaneously, the Center rationally determined that it would need to exercise AMI's unsolicited option to provide four additional chargers,⁷ thereby bringing the total number of AMI chargers to eight. *See AR Tab 2 at 5, Option-1 (AMI's proposal).* The Center considered AMI's offer as technically equivalent so long as it exercised the option, but unfortunately for AMI, adding the optional chargers also raised AMI's price above those of the awardee and several others. *AR Tab 2 at 5, Tab 3 at 2; and Tab 4 at 2, ¶ 5.* Consistent with the lowest-price-technically-acceptable award criteria, another offeror received the purchase order. *AR Tab 1 at 4; Tab 3 at 2.*

The ODRA finds that AMI's alternate product could not be deemed technically acceptable under this salient characteristic without considering the option and the additional price. AMI cannot justifiably complain that the Center considered the option while simultaneously claiming its basic charger was technically acceptable. *See Comments at 11.* The evaluation was rationally based on, and consistent with, the Solicitation and the evaluation requirements of the AMS.

III. Recommendation

Based on the foregoing findings of fact and conclusions of law, the ODRA recommends that the remaining ground of AMI's Protest be denied.



John A. Dietrich

Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition

⁷ Given that AMI provided an unsolicited option to add chargers to its quotation, it is readily apparent that AMI knew before bidding that a single battery charger was not the functional equivalent of a dual battery charger.