

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA: 20-006

4 Attorney for Interested Party Monster Auto Corp.

5
6 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
PROCUREMENT APPEAL

7
8 IN THE APPEAL OF) **DOCKET No.: OPA-PA-20-006**
9 SODERHOLM SALES AND) **INTERESTED PARTY'S COMMENTS**
LEASING, INC.,) **TO THE AGENCY REPORT**
10)
Apellant.)
11)
12)

13 COMES NOW Monster Auto Corp dba Auto Spot ("Auto Spot"), the winning bidder of
14 Invitation for Bid: GSA-055-19, 14 Passenger ADA-Compliant Buses (the "IFB") and hereby
15 submits the Interested Party's Comments to the Agency Report submitted by the General
16 Services Agency ("GSA"). The Agency Report Confirms that the appeal by Soderholm Sales &
17 Leasing, Inc. ("Soderholm") is without merit.

18 **I. BACKGROUND**

19 On September 18, 2019, GSA issued the IFB.
20 On May 29, 2020, GSA issued a Notice of Intent to Award the contract to Auto Spot.
21 On June 13, 2020, Soderholm submitted a procurement protest to GSA.
22 On June 22, 2020, GSA denied Soderholm's procurement protest.

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1 On June 29, 2020, Soderholm filed a Notice of Appeal with the Office of Public Accountability ("OPA").

2 The Notice of Appeal listed the following grounds for appeal:

- 3 1. We were the lowest responsive and responsible bidder by \$4,474.20 per bus, as
4 acknowledged and agreed to by Ms. Acfalle in her denial on 6/22/20. There can be no
5 caveat after she agreed that we were the lowest responsive and responsible bidder. Being
6 the lowest responsive and responsible bidder means we won the bid, and met all the terms.
- 7 2. Christine Tedtaotao of GSA asked us for a clarification of the location of the wheelchair
8 lift due to very confusing bid specifications. We submitted the floor plan she wanted. She
9 said she was satisfied.
- 10 3. The Pre-Award BUY AMERICA CERTIFICATION dated 2/17/20 by Forest River, the
11 parent company of StarCraft Bus, the bus manufacturer that Monster Auto Spot bid, was
12 untimely and defective. It should be submitted with the bid opening on 11/15/19.
13 Additionally, Buy America certifications must add up to 100% showing domestic content
14 of at least 70% and foreign content. The certificate shows an unaccounted amount of
15 4.55% which means it effect it adds up to 104.55%. This is impossible. In the our 30+
16 years of bidding U.S. FTA funded bus procurements and reviewing hundreds of Buy
17 America certificates, we have never seen an unaccounted percentage. The certificate is a
18 sham and defective. The Forest River Buy America Monster Autor Spot bid no longer
19 meet the Buy America requirement of 70% domestic content.
- 20 4. Moreover, Cel Babauta, the GRTA Director, has no authority or knowledge to certify a
21 Buy America certificate for Starcraft Bus, the bus manufacturer. He does not work for
22 Starcraft Bus.
- 23 5. After two phone conversations with Christine Tedtaotao and one with Anita Cruz, over
24 fifty phone messages and emails to Christine, Anita and Claudia were not returned. This
is unfair and illegal to not answer us.
6. GSA has favored the high bid of Monster Auto Spot continually due to the close
employment relationship with the Lieutenant Governor.
7. If a hearing is needed we request it be by Zoom or Charlie Reynolds of Triple J Motors
be allowed to represent us.

17 Soderholm then requested for the bid to be terminated and new IFB issued. *See* Notice of Appeal.

18 On July 17, 2020, GSA filed its Agency Report and refuted all claims in the protest.

19 II. COMMENTS TO THE AGENCY REPORT

20 Auto Spot makes the following comments with respect to each point noted in the Agency
21 Report:
22

1 a. Protest issue 1: Our bid was \$158,700.00 per bus which is \$4,474. 20 less than Monster
2 Auto Spot's bid of \$163, 174. 20. GSA response: Agree, but your bid your bid was
3 rejected as a result of non-compliance with specifications. Therefore, this matter is
4 denied. (ref: Bid Status, May 29 provided to you). 2 GAR, DIV 4, CH. 3

5 Comment: Soderholm submitted the lowest bid for vehicles equipped with rear facing wheelchair
6 lifts. However, the IFB required the lift to be located curbside beside the front entrance. As
7 such, Soderholm did not comply with the bid specifications and its bid was rejected. Auto Spot
8 was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles that
9 satisfied the bid specifications.

10 b. Protest issue 2: We met all the terms of the bid, as evidenced by the attached bid abstract.
11 GSA response: GSA response: Agree. All bidder information and required forms are
12 recorded on the abstract and become part of the procurement record. However, the bid
13 abstract is not the basis for award. It's merely a record of information and a checklist.
14 Your bid was rejected as a result of non-compliance with specifications. Therefore, this
15 matter is denied. 2 GAR, DIV 4, §3109.

16 Comment: Soderholm did not comply with the bid specifications and its bid was rejected. Auto
17 Spot was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles
18 that satisfied the bid specifications.

19 c. Protest issue 3: Our bid was the lowest responsive and responsible bid. GSA response:
20 Agree, but for the same reason as in protest issue 1 – non-compliance with specifications.
21 Therefore, this matter is denied. 2 GAR, DIV 4, CH. 3.

22 Comment: Soderholm submitted the lowest bid for vehicles equipped with rear facing wheelchair
23 lifts. However, the IFB required the lift to be located curbside beside the front entrance. As
24 such, Soderholm did not comply with the bid specifications and its bid was rejected. Auto Spot
was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles that
satisfied the bid specifications.

1 d. Protest issue 4: You sent us questions about the location of the wheelchair lift, we
2 responded 1/4/20 with the attached email questioning the confusing bid instructions on
3 page 45 of the specifications, and offering the floor plan with the preferred front lift at no
4 additional cost? Specifications are routinely adjusted at preproduction meetings? You
5 said you were satisfied in a subsequent phone conversation. GSA response: Disagree.
6 Your original bid didn't meet the specifics for the wheelchair lift and your later memo
can't change that fact. Moreover, there's no documented evidence Christine Tedtaotao
stated she as satisfied with the floor plan you presented on June 4, 2020 email for the
location of the wheelchair lift. Her last email to your company was June 12, 2020 advising
on the Bid Status and for acknowledgement. Therefore, this matter is denied.

7 Comment: Soderholm did not comply with the bid specifications and its bid was rejected. Auto
8 Spot was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles
9 that satisfied the bid specifications.

10 e. Protest issue 5: We told you that the GM/GMC/Savanna chassis that Monster Auto Spot
11 bid, no longer meets Buy America, due to too much foreign content which disallows these
12 busses to be purchased using Federal Transportation Agency (FTA) funds. See attached
13 letter from EIDorado. On page 40, included in the Special Provisions, #23 states that
vehicles must "comply with all FTA Buy America/ADA requirement..." GSA response:
Disagree. Attached are two documents – one from GRTA Director certifying Monster
Auto complied with all the specifications and another from StarCraft Bus certifying
compliance with FTA Buy America regulations. Therefore, this matter is denied.

14 Comment: Soderholm did not comply with the bid specifications and its bid was rejected. Auto
15 Spot was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles
16 that satisfied the bid specifications.

17 f. Protest issue 6: EIDorado was purchased by Forest River, Inc. on 5/8/20, the parent
18 company of StarCraft, the bus manufacturer that Monster auto Spot bid. The same Buy
19 America failure applies to all GM/GMC/Savanna chassis that Forest River/StarCraft uses
20 for StarCraft buses that Monster Auto Spot bid. See attached press release from Forest
21 River for your review. GSA response: Disagree. We provided documents showing
22 StarCraft buses are compliant with FTA Buy America regulations and another document
23 signed by the GRTA Director certifying specification compliance. Therefore, this matter
24 is denied.

1 Comment: Soderholm did not comply with the bid specifications and its bid was rejected. Auto
2 Spot was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles
3 that satisfied the bid specifications.

4 g. Protest issue 7: I was only able to talk to you on the phone twice last year, and Anita Cruz
5 once. You have said the bid was with the Attorney General's office? For over 6 months I
6 have left numerous phone messages & sent numerous emails to you both to no avail.
7 There was absolutely no common courtesy to return my calls or emails. GSA response:
Disagree. Under the COVID-19 emergency declaration by the Governor of Guam, the
Attorney General's office worked limited hours with a skeleton crew. Bids for review at
the Attorney General's office is beyond our control. Therefore, this matter is denied.

8 Comment: No Comment.

9 h. Protest issue 8: We talked to Ryan Fujii, the head to the FTA Pacific office in Honolulu.
10 He assured us that the FTA will not fund a bid that for buses don't meet Buy America.
11 GSA response: Disagree. The buses from Monster Auto meet the Buy America Act based
12 on the documents provided. Therefore, this matter is denied.

13 Comment: Auto Spot provided certifications that its vehicles meet the Buy America requirement
14 under the IFB.

15 i. Protest issue 9: We will not sign your attached Bid Status. It is unfair, violates the law
16 & FTA guidelines. GSA response: Disagree. Not signing the Bid Status is
immaterial to an award. We followed all bid procedures guided by procurement law in 5
GCA, CH 5 and 2 GAR, DIV 4 and had additional oversight and review by the Attorney
General of Guam and our administrative counsel. Documents provided by StarCraft show
compliance with FTA guidelines on Buy America Act. Therefore, this matter is denied.

17 Comment: No Comment.

18 j. Protest issue 10: We request the bid be awarded to us, or at the very least the bid be
19 cancelled, and rebid to clarify the numerous discrepancies, and that the bid was opened
20 over 6 months ago which is an unbelievable long period of time to award a low bid. GSA
21 response: Disagree. Your bid was rejected as a result of non-compliance with
22 specifications (ref: Bid Status, May 29 provided to you). GSA followed all
rules/regulation and bid procedures in accordance with 2 GAR, DIV 4 and 5 GCA, CH
5. Moreover, the length of time for review at the Attorney General's office is beyond our
control. Therefore, this matter is denied.

1 Comment: Soderholm did not comply with the bid specifications and its bid was rejected. Auto
2 Spot was the lowest responsive bidder for this IFB because it bid the lowest price for vehicles
3 that satisfied the bid specifications. Therefore, this appeal should be denied.

4 **CONCLUSION**

5 A review of the procurement record reveals that Soderholm did not comply with the bid
6 specifications. As a result, its bid was rejected. Auto Spot was the lowest responsive bidder for
7 this IFB because it bid the lowest price for vehicles that satisfied the bid specifications. Therefore,
8 this appeal should be denied.

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10 Dated this 10th day of August, 2020.

11 **McDONALD LAW OFFICE, LLC**
12 Attorneys for Interested Party Monster Auto Corp.

13 By: _____

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15 **CHARLES H. McDONALD II**