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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Dew Drop Sprinklers & Landscaping

File: B-293963

Date: July 15, 2004

Lawrence H. Vance, Jr., Esq., Winston & Cashatt, for the protester.
Marion T. Cordova, Esq., Department of Agriculture, for the agency.
Charles W. Morrow, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that higher-priced quotation offered the best value where the awardee had more relevant experience than the protester and the protester failed to provide such required information as a safety plan.

DECISION

Dew Drop Sprinklers & Landscaping protests the issuance of a purchase order to TML Construction, Inc. under request for quotations (RFQ) No. R1-04-04-04, issued by the United States Department of Agriculture, Forest Service, for water system improvements. Dew Drop challenges the agency's decision to award to TML at a higher price.

We deny the protest.

The RFQ, issued on October 9, 2003 under the simplified acquisition procedures prescribed in Federal Acquisition Regulation (FAR) Part 13, contemplated award of a fixed-price order to relocate three existing "Reduced Pressure Backflow Preventor[s]" from underground vaults to above ground, heated enclosures at the Coeur d'Alene Nursery, Idaho Panhandle National Forest, Idaho. The RFQ included detailed project drawings and, in addition, encouraged vendors to undertake a site visit. RFQ § J-3. Award was to be made on the basis of the quotation representing the "best overall value" considering "past performance, experience, technical ability to meet the requirements, including Contractor's safety measures in place and identified in the offer," and price. RFQ, Standard Form 18.

Vendors were directed to complete and return with their quotation a questionnaire that requested information regarding the number of years of contracting experience

and the projects completed within the last 3 years, including contract references. In addition, the questionnaire required vendors to describe their safety measures and procedures, specifically addressing: (1) how safety for employees and the public is ensured; (2) transportation safety to and from work; and (3) first aid and evacuation plans in the event of illness or injury. The experience questionnaire also required vendors to describe the staffing and equipment to be used on the project, and the anticipated schedule of progress. Vendors were further directed to furnish a completed Idaho certificate of worker's compensation insurance, which required the vendor to identify all subcontractors assisting with performance of the work. RFQ §§ J-4, J-5.

Seven quotations were received by the closing time on October 31. Due to funding constraints, the procurement was delayed until March 2004, which prompted the Forest Service to ask the vendors to confirm their previously submitted quotations. Four vendors, including Dew Drop and TML, responded by either confirming or revising their prices. Dew Drop quoted a revised price of \$50,527; TML confirmed a previously quoted price of \$72,855.¹

The record indicates that the Forest Service found Dew Drop's quotation to be less advantageous than TML's under the non-price evaluation factors. The Forest Service found that while Dew Drop possessed some experience in pipe fitting, it primarily specialized in sprinklers and landscape projects and had only limited experience with the type of water system improvement project that was the subject of the solicitation. Thus, one reference reported that Dew Drop had done good work in providing landscaping, while a second reference indicated that he was pleased with Dew Drop's work under a contract for playfield sod and landscaping, including irrigation. A third reference indicated that Dew Drop had done good work in installing a high voltage power line, while a fourth reference referred to a habitat project for the Corps of Engineers but provided only minimal detail on the work.

In contrast, the Forest Service found that TML's experience, for which the agency received high ratings from the references, "most precisely matched" the work required under the contract. Award Statement at 3. Specifically, the agency learned from a reference that TML had done a "very good job" in performing a very similar water system improvement project, including changing a pump and working on a remote lift station, two domestic wells and pumps. *Id.* On another contract, a local water district reported that it was "more than satisfied" with the work TML had done in building a booster pump station with plumbing and electronics. *Id.* On a third contract, TML completed a well and filtration building project. On a fourth contract, TML installed two well houses, connected piping to a water system, installed large pressure reducing and pressure sustaining valves, and upgraded the waste water

¹ The government estimate for the project was \$60,819.

system. The reference contacted by the agency for this project advised that TML was “one of the best contractors he’d ever worked with.” Id.

In addition, the Forest Service noted that Dew Drop had not responded to the requirement to describe its safety procedures, instead stating that the “Company Safety Program–Manual [is] available on request,” and did not identify the subcontractors it planned to use on the project, as required by the Idaho certificate of worker’s compensation insurance. In contrast, the Forest Service found that TML’s quotation included all of the requested information, including a safety plan, a detailed work schedule, and the identity of TML’s subcontractor.

In making her price/technical tradeoff determination, the contracting officer noted the critical nature of the required work. Specifically, the contracting officer noted that the nursery water system serves greenhouses that house approximately four million tree seedlings; according to the contracting officer, near lethal temperatures for the seedlings could result within approximately 1 hour of an interruption in the water supply. In addition, the contracting officer noted that the project requires work to be done between high-pressure interstate gas and petroleum pipelines. The contracting officer concluded that, given the critical nature of the required work, the advantages of TML’s quotation, including TML’s proven expertise in this type of work, and the fact that TML, unlike Dew Drop, had furnished such required information as a safety plan, warranted payment of TML’s higher price. Upon learning of the resulting award to TML, Dew Drop filed this protest with our Office.

Dew Drop protests that the agency improperly utilized experience to discriminate between the two proposals, while ignoring price in determining the best value. According to the protester, the project to be performed here was a “simple” project, and the fact that the solicitation was issued under simplified acquisition procedures “belies the agency’s contention that technical evaluation factors were important and somehow justify spending additional taxpayer money.” Dew Drop Comments at 2.

When using simplified acquisition procedures an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests against an allegedly improper simplified award selection, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3.

We find the source selection to be reasonable and in accordance with the terms of the solicitation. Although Dew Drop asserts that it was improper for the agency to consider the relative experience of the two offerors as a discriminator, the RFQ specifically stated that the agency would evaluate experience, along with past performance, technical ability to meet the requirements and price, and make award

to the vendor whose quotation provided the best value after considering these factors. Further, while Dew Drop challenges the agency's position that the technical evaluation factors were important, arguing that the project was only a simple one, we note that the RFQ did not make price more significant than the technical factors. On the contrary, the RFQ did not specify the relative importance of the individual evaluation factors and, in the absence of any indication in the RFQ of the relative importance among the individual evaluation factors, they are presumed to be of equal importance. See Hyperbaric Techs., Inc., B-293047.2; B-293047.3, Feb. 11, 2004, 2004 CPD ¶ 87 at 4; Maryland Office Relocators, B-291092, Nov. 12, 2002, 2002 CPD ¶ 198 at 5.

Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Price/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the established factors. See Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. An agency may properly select a more highly rated quotation over one offering a lower price where it has reasonably determined that the technical superiority outweighs the price difference. See Sawtooth Enters., Inc., supra., at 4.

As explained above, the contracting officer determined that TML's non-price advantages warranted payment of that firm's higher price. Dew Drop has furnished no basis for our Office to question this determination.

The protest is denied.

Anthony H. Gamboa
General Counsel