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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Chicago Dryer Company

File: B-293940

Date: June 30, 2004

H. K. Tyler Jr. for the protester.

Dennis Foley, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Angela A. Wu and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's selection decision is timely when filed within 10 days of protester's receipt of information from contracting agency explaining the basis for the agency's decision.
 2. Contracting agency reasonably considered additional, value-added features offered by vendor where solicitation stated that quotations offering features beyond those specified in the solicitation, and found to be of value to the agency, would be favorably considered in the evaluation.
 3. Contracting agency reasonably selected technically superior, slightly higher-priced quotation where solicitation provided for selection of quotation found most advantageous to the government, and agency reasonably determined that successful vendor's additional technical features better satisfied agency's needs so as to outweigh small price premium, compared to protester's lower technically rated, slightly lower-priced quotation.
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DECISION

Chicago Dryer Company (CDC) protests the issuance of an order to G.A. Braun, Inc. under request for quotations (RFQ) No. 244-04-00123 by the Department of Veterans Affairs (VA) for laundry equipment at the VA Medical Center laundry facility in Pittsburgh, Pennsylvania. CDC objects to the agency's evaluation of its and Braun's quotations.

We deny the protest.

VA issued the RFQ on January 6, 2004 to procure two machines for folding and stacking laundry, accompanied by training materials. The RFQ specified that “[e]quipment and materials shall be suitable for installation in available space” and that the contractor must remove existing laundry equipment to be utilized as a trade-in. RFQ at 2-3. The solicitation also stated that the successful vendor should “make a site visit to determine what equipment, if any, may need to be moved and reinstalled.” RFQ at 2-12. Prior to submitting its quotation, CDC sent a representative to visit the site, taking note of the building footprint and equipment layout.

With regard to the evaluation process, the RFQ stated that VA did not intend to hold discussions with vendors before issuing an order, so quotations should contain the vendors’ best terms from a price and technical standpoint. RFQ at 5-2. The RFQ advised that VA would select the quotation found to be most advantageous to the government, price and other factors considered. RFQ amend. 2, at 5-7a. In addition to price, the RFQ listed two evaluation factors, technical capability and quality/past performance, which, when combined, were significantly more important than price. Id. Under the technical capability factor, the RFQ stated that a vendor’s “[a]bility to provide functions that are not required by the specifications but described as ‘preferred’ may increase [the vendor’s] rating for this factor.” Id.

VA received four quotations in response to the RFQ. CDC’s price was lowest at \$137,530; Braun’s price (\$137,712) was second lowest, and only \$182 higher than CDC’s. The contracting officer appointed a technical evaluation panel (TEP) to evaluate the technical quotations submitted. Under the technical capability factor, the TEP gave Braun’s quotation the maximum score of five points; CDC’s quotation received four points. The TEP concluded that CDC’s equipment met all the technical specifications in the RFQ, but expressed concern that the equipment would not fit properly in the assigned area and might “cause congestion of the work area and close off the pathway for cart movement.” Agency Report, exh. 5, attach. 1, at 2. With respect to Braun’s quotation, the TEP concluded that Braun’s equipment exceeded the specifications. The TEP emphasized that Braun’s crossfolder and stacker could be linked with the microprocessing of the spreader feeder, and that this was a “preferred feature, although not required by the specifications.” Id. at 1. It also pointed out that Braun’s equipment could be linked to VA’s existing Washnet program, which would allow the VA supervisor to monitor performance and productivity closely. It called this a “very desirable feature.” Id. With regard to the other non-price factor, quality/past performance, both CDC’s and Braun’s quotations received the maximum score available. The TEP recommended selection of Braun’s quotation based on the desirable additional features Braun offered. The contracting officer agreed with the TEP’s recommendation to select Braun, deeming Braun’s quotation the “best value” to the government because of its technical advantages, which warranted the \$182 price premium.

On March 30, the contracting officer informed CDC via e-mail that VA had not selected CDC's quotation. CDC immediately sent an e-mail to the contracting officer advising that it would protest VA's decision upon receipt of formal notification and explanatory documents. In a letter dated April 5, postmarked April 8, and received by CDC April 11, VA again notified CDC of its decision to select Braun and briefly explained the reasons for its decision. CDC filed its protest with our Office on April 12.

VA argues that CDC's protest is untimely because it was not filed within 10 days of the contracting officer's preliminary e-mail notice that CDC's quotation had not been selected. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2004). We disagree. The agency's April 5 e-mail advising that Braun's quotation had been selected did not contain sufficient information to put CDC on notice of its basis for protest. Immediately after receiving that e-mail, CDC acted reasonably and promptly by first requesting further information from the agency, and then filing its protest on April 12, the same day it received the agency's letter explaining in some further detail the basis for the selection decision. See Alliance Properties, Inc., B-203539, Oct. 28, 1981, 81-2 CPD ¶ 357 at 2.

CDC challenges VA's evaluation of both its and Braun's quotation, arguing that VA improperly favored Braun in the source selection process, most notably by applying what it deems arbitrary evaluation standards. CDC alleges that VA could not have properly evaluated CDC's quotation under the technical capability factor because CDC met all of the solicitation's technical criteria yet did not receive the maximum score. In addition, CDC asserts its equipment is equally capable of performing the "preferred features" that earned Braun the maximum score, namely, linking with the microprocessing of the existing spreader feeder and with the existing Washnet monitoring program. According to CDC, it was improper for VA to consider these preferred features in the evaluation without having specified them in the solicitation or discussing them with CDC. Similarly, CDC challenges VA's conclusion that CDC's equipment will not fit properly into the facility because VA did not specify dimensional requirements in its solicitation and did not discuss these requirements with CDC.

Where an agency's evaluation is challenged, our Office will not reevaluate quotations but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206 at 2. Here, we see no basis to question the agency's evaluation or selection of Braun's quotation.

CDC first argues that it was unreasonable for VA to consider the additional features Braun offered because these features were not specified in the solicitation. We disagree. As noted above, the RFQ expressly stated that VA would consider a vendor's ability to offer additional features not required by the specifications. VA's consideration of the Braun equipment's ability to link with VA's existing systems thus is entirely consistent with the RFQ. Further, VA had no obligation to hold

discussions with CDC about its ability to offer this feature given that the RFQ stated that VA did not intend to hold discussions before selecting a vendor, see OMNIPLEX World Servs. Corp., B-282630.2, Sept. 22, 1999, 99-2 CPD ¶ 64 at 4, and, in fact, specifically advised vendors to include their best terms from a price and technical standpoint in their initial quotations.

Similarly, VA was under no obligation to specify its dimensional requirements before downgrading the CDC equipment's technical score for its inability to fit properly into the VA laundry facilities. The RFQ stated that equipment must be suitable for installation in the available space and that space limitations do exist for installation of the new equipment. It also advised vendors to perform a site visit to ensure that they could move or reinstall existing equipment alongside new equipment. It clearly was reasonable for VA to give CDC a less-than-maximum technical score for equipment that did not fit properly into the available space, especially when CDC had the opportunity to—and in fact did—visit the site for the very purpose of assessing such questions as whether its equipment might cause congestion of cart pathways.¹

In a related argument, CDC asserts that its quotation should have been selected because its equipment met all the solicitation criteria, and it offered the lowest price. Again, we disagree. Where, as here, the solicitation states that the agency will select the quotation found to be most advantageous to the government, as opposed to selection of the lowest-priced, technically acceptable vendor, the evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable; rather, proposals may be further differentiated to distinguish their relative quality by considering the degree to which technically acceptable proposals exceed the stated minimum requirements or will better satisfy the agency's needs. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 4.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., supra. As noted above, under the technical capability factor, VA found Braun's equipment technically superior to CDC's based on its ability to link to existing systems. In addition, VA reasonably questioned whether CDC's equipment would fit properly into the available space. Given Braun's technical superiority, both vendors' receipt of the highest score available under the past performance factor, and the solicitation's provision that technical capability and past performance combined would be more important than price, we find nothing that would lead us to believe

¹ In this regard, while CDC generally disagrees with the agency's conclusion regarding the size of its equipment, it has provided no evidence to support its assertion that its equipment would fit in the available space without interfering with other operations in the facility.

that VA unreasonably determined that Braun's quotation better satisfied the agency's needs. We also find nothing unreasonable about VA's conclusion that the technical advantages in Braun's quotation were sufficiently significant to outweigh the small price premium. Id. at 2.

CDC makes two further arguments challenging VA's selection of Braun. First, CDC claims that VA improperly held discussions with other vendors and engaged in technical leveling² by allegedly comparing quotations to each other rather than evaluating them under the criteria in the RFQ. CDC provides no evidence, and we see none in the record, substantiating its claim that such discussions occurred. Further, as discussed above, the record clearly shows that the evaluation was based on application of the criteria in the RFQ. Second, CDC contends that VA favored Braun in the past performance evaluation by relying solely upon recommendations from VA facilities instead of contacting all of CDC's references. Not only are agencies not obligated to call all of a firm's listed references, see Basic Tech., Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45 at 7, but VA's approach clearly did not prejudice CDC, given that it received the maximum score available under the past performance factor.

The protest is denied.

Anthony H. Gamboa
General Counsel

² The term "technical leveling" means helping a firm bring its quotation up to the level of others through successive rounds of discussions; technical leveling no longer is expressly prohibited by the Federal Acquisition Regulation. Image One Tech. & Mgmt., Ltd., B-289334, Jan. 10, 2002, 2002 CPD ¶ 18 at 4.