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**Comptroller General
of the United States**

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

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: T. J. Lambrecht Construction, Inc.

File: B-294425

Date: September 14, 2004

Kenneth A. Carlson, Esq., and Melanie D. Manning, Esq., Tracy, Johnson & Wilson, for the protester.

Patrick A. Mysliwy, Esq., Maish & Mysliwy, an intervenor.

Sanford A. Solomon, Esq., U.S. Army Corps of Engineers, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's allegation that agency misevaluated its proposal is denied where record shows agency's determination that protester's proposal was unacceptable was reasonable and consistent with evaluation factors.

DECISION

T.J. Lambrecht Construction, Inc. (TJL) protests the U.S. Army Corps of Engineers' award of a contract to Dyer Construction Company under request for proposals (RFP) No. W912P6-04-R-0001, for flood control on Deer Creek, Ford Heights, Illinois. TJL challenges the evaluation, and resulting rejection, of its proposal.

We deny the protest.

The RFP, issued on May 10, 2004, provided for award of a fixed-price contract to widen the channel along Deer Creek, excavate two shallow reservoirs, and build a concrete spillway and various culverts and headwalls. Award was to be made to the offeror submitting the lowest-priced, technically acceptable offer. The RFP provided that, in order for a proposal to be considered technically acceptable, it had to receive a "go" rating under each of eight evaluation factors, which covered areas such as past performance, ability to excavate material, ability to haul material, experience working below water level, and experience building cast-in-concrete structures. The solicitation specifically required that the information presented in the proposal "provide more than superficial coverage" of the areas to be addressed in the technical proposal. RFP at 20.

Six firms submitted proposals. TJJ's proposal was the lowest-priced, but the technical evaluation panel determined that it was unacceptable under three evaluation areas. The agency therefore made award to Dyer, whose technically acceptable proposal was next lowest in price. TJJ maintains that the agency unreasonably determined that its offer failed to meet the RFP requirements.

In reviewing an agency's evaluation, we will not reevaluate the proposals; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. Applied Mgmt. Solutions, Inc., B-291191, Nov. 15, 2002, 2002 CPD ¶ 202 at 2.

The agency reasonably rejected TJJ's proposal as unacceptable. One of the factors for which TJJ's proposal received a "no go" rating was experience building cast-in-place concrete structures, under which offerors were to "provide documentation of at least two projects, with no time frame limits, that demonstrate experience building cast-in-place concrete structures." RFP at 21. In response to this requirement, TJJ's proposal stated only that "[TJJ] does not self perform the actual cast in place concrete. However, TJJ does perform the excavation and backfill for the subcontractor for this work." TJJ Proposal, Vol. 1, 3.7. The proposal made no mention of projects--performed by TJJ or a subcontractor--involving cast-in-place concrete structures, and did not include any other information--such as the name of the subcontractor with which it previously had performed--that might give the agency further guidance in evaluating the protester's experience in this area. Given TJJ's manifest failure to present the required information establishing that it possessed the required experience, the agency's "no go" rating was reasonable.¹

TJJ also challenges the reasonableness of the other two "no go" findings--under the areas of experience in cold weather conditions, and the ability to haul 2,000 cubic yards of material per day. However, these arguments are academic, and we thus need not address them, since TJJ's proposal properly was rejected based on the finding that it was unacceptable under the cast-in-place concrete structures experience area. TJJ's proposal could not be accepted for award even if we determined that the ratings under the two other "no go" areas were unreasonable.

¹ TJJ asserts that the agency should have asked clarifying questions before rejecting its proposal. However, if the agency had advised TJJ of the deficiencies in its proposal and provided the firm with an opportunity to submit information to make its proposal acceptable, the agency's action would have constituted discussions, not clarifications. Since the RFP specifically stated that the government intended to evaluate proposals and award a contract without discussions, RFP at 28, the agency was not required to provide the firm with such an opportunity to revise its proposal. See Federal Acquisition Regulation § 15.306(a)(2); Promar; Urethane Prods. Corp., B-292409 et al., Aug. 25, 2003, 2003 CPD ¶ 187 at 8.

The protester further questions the evaluation on the basis that there were inconsistencies in the evaluation record. These allegations are without merit. For example, the protester alleges that there was disagreement among the evaluators regarding the merits of its proposal. However, the lack of unanimity among evaluators in considering a proposal does not provide a basis to challenge the validity of the evaluation. See Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 5 n.7.

The protest is denied.

Anthony H. Gamboa
General Counsel