



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: Firetech Automatic Sprinkler

File: B-296626

Date: September 22, 2005

A. W. Pharris for the protester.
Elin M. Dugan, Esq., Department of Agriculture, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined, in accordance with the solicitation's evaluation criteria, that the awardee's superior experience and past performance justified award based on its slightly higher-priced quotation.

DECISION

Firetech Automatic Sprinkler protests the U.S. Forest Service's award to Concept Integrators, Inc. under request for quotations (RFQ) No. R5SC0605018, for construction work.

We deny the protest.

The RFQ, issued on January 13, 2005 under the simplified acquisition procedures prescribed in Federal Acquisition Regulation (FAR) part 13 and posted on the FedBizOpps website, sought improvements to the Information Center Kiosk at Bucks Lake, Plumas National Forest, Quincy, California. The project required construction of a roof over the existing stone veneer kiosk and site work to include clearing, grading, aggregate base, asphalt pavement, concrete, concrete staining, a trash receptacle, picnic tables, and the construction of a dry creek bed.

The award was to be made on a "best value" basis considering price, experience and past performance. As permitted by the solicitation, the agency, in its evaluation,

gave equal evaluation weight to these three factors and rated them based on a 5-point scale.¹

Vendors were instructed to “provide a list of all contracts completed within the last three years.” Additionally, the RFQ advised that “[q]uoters with no record of past performance will receive a neutral rating for past performance” and that “[q]uoters with no experience in the type of work solicited, may list other types of contracts which exemplify their past performance.” RFQ at 43.

In response to the RFQ, the Forest Service received seven quotations, including Firetech’s quotation priced at \$46,405 and Concept’s quotation priced at \$47,480. Only the four lowest priced quotations were evaluated, as they were the only ones within the government’s \$50,000 budget. The Forest Service initially selected Concept for award on March 3, but decided to reevaluate the quotations of Concept and Firetech, after Firetech complained, and the agency confirmed, that its references had not been contacted during the initial evaluation. The agency thus requested that these two vendors submit supplemental past performance data for further evaluation. Contracting Officer’s Statement at 2.

Based on this reevaluation, the agency determined that Concept’s experience and past performance were superior to Firetech’s, such that Concept’s slightly higher priced quotation represented the “best value for the government.” Agency Report, Tab E, Source Selection Report, at 1.

Firetech’s experience rating was based on its “recent experience, which indicated two projects, consisting of simple maintenance work, on projects not yet completed.” The agency found that the contracting officer’s technical representative (COTR) on these Forest Service contracts “expressed a general satisfaction with the work but reported that work was not done in a timely manner and on both contracts extensions for additional time [were] needed.”² With respect to the other two contracts referenced by Firetech in its quotation, the agency found that the contracts for “sprinkler systems installations, though very good, were not completed within the last three years,” and therefore were not considered in the evaluation. Id.

¹ The adjectival ratings for the 5 points were (1) poor, (2) marginal, (3) neutral or average, (4) good and (5) excellent.

² In response to Firetech’s allegations that the agency had misrepresented the COTR’s assessment of its past performance, our Office conducted a hearing. At the hearing, the COTR persuasively confirmed that the record of the interview that the agency relied upon to evaluate Firetech’s past performance accurately reflected her assessment of Firetech’s performance.

In contrast, the agency found that Concept's superior experience was a result of "five projects, two ongoing and three completed within the last two years, with experience involving both heavy maintenance and construction projects." With respect to past performance, the panel found that all of Concept's references expressed complete satisfaction or 99 percent satisfaction and that all contracts were completed on time (except in one instance where poor communication with the subcontractor was the cause of delay, although this reference stressed the "contractor's good quality work."). Id.

Firetech argues that the Corps unreasonably evaluated its experience and past performance, and did not give sufficient weight to its low price.

As noted above, the procurement was conducted under simplified acquisition procedures. When using these 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 of an allegedly improper simplified acquisition evaluation and award selection, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Dew Drop Sprinklers & Landscaping, B-293963, July 15, 2004, 2004 CPD ¶ 171 at 3.

We first note that, contrary to Firetech's argument, the RFQ specifically limited the past performance and experience evaluation to contracts completed within the last 3 years. Thus, the agency properly did not consider Firetech's references for contracts completed more than 3 years previously.³

While Firetech notes that some Forest Service representatives have, in our (as well as Firetech's) view, erroneously characterized its two contracts that were evaluated as "not relevant," the record shows that Firetech's experience and past performance were in fact rated based on these contracts. The record reflects that Firetech's experience was not rated as high as Concept's primarily because during the past 3 years it only performed two relatively low dollar value contracts that had not yet been completed, as compared to Concept's more extensive experience during this period completing larger dollar and more relevant contracts.

While Firetech also disagrees with its past performance rating, the agency reasonably relied upon the comments made in the interview with the COTR for those contracts in rating Firetech's past performance. Since nothing on the face of the reference's comments reasonably would have led the agency to look behind them, the agency could rely on the COTR's comments reflecting that the work was not

³ Contrary to Firetech's assertion, nothing in the FAR requires the agency to consider past performance references submitted for contracts completed earlier than the period for which the solicitation requested references.

done in a timely manner in evaluating Firetech's past performance. Gulf Group, Inc., B-287697, B-287697.2, July 24, 2001, 2001 CPD ¶ 135 at 4.

Firetech finally asserts that its lower price should have been more influential in determining the best value. However, 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. 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.⁴ Dew Drop Sprinklers & Landscaping, supra, at 3. As discussed above, the agency reasonably determined that Concept's superior experience and past performance justified making award to that firm, notwithstanding its slightly higher price.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ Contrary to the protester's contention, the RFQ did not suggest that price was a more important factor than experience or past performance.

⁵ We find no evidence to support Firetech's allegation that its evaluation was the result of bias against it and favoritism towards Concept, which has performed prior contracts with this Forest Service office.