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**Comptroller General
of the United States**

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

Decision

Matter of: Midwest Metals

File: B-296303

Date: June 3, 2005

David Murar for the protester.

Marc L. Peterson, Esq., Defense Logistics Agency, for the agency.

Sharon L. Larkin, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Purchase order issued to vendor quoting a higher price is reasonable, where agency reasonably determined that higher-rated past performance indicated less performance risk and was worth the additional cost.

DECISION

Midwest Metals protests the issuance of a purchase order to Y2K Machine Shop under request for quotations (RFQ) No. SP0500-05-T-6804, issued by the Defense Logistics Agency (DLA) for parts.

We deny the protest.

The RFQ, issued as a total small business set-aside, was listed on the Defense Supply Center Philadelphia (DSCP) General and Industrial Electronic Bulletin Board (EBB) system, the DLA Preaward Contracting System Electronic Data Interchange, and the DLA Procurement Gateway. Contractors that entered into the EBB or the DLA Procurement Gateway for purposes of submitting a quotation under the RFQ agreed to the terms and conditions of the then-current version of the DSCP Simplified Purchase Agreement (SPA). The SPA specified that award would be made on a best-value basis, using tradeoff techniques that included “the Delivery Evaluation Factor Program, the Automated Best Value System [(ABVS),] and the Contracting Officer’s individual determinations based on a comparative assessment of pertinent circumstances, including past performance, delivery and product quality.” SPA at 19. The ABVS is an automated system which collects and analyzes vendors’ past performance history for a specific period and translates it into a numeric score; it is based on considerations of delivery and quality.

Twelve vendors responded to the RFQ. Eleven of these (including Y2K) were small business manufacturers and one (Midwest) was a small business dealer. Midwest submitted the lowest quotation at \$2,736.62, while Y2K submitted the second lowest quotation at \$3,196.46. Both vendors offered the same delivery period (90 days). However, in the area of past performance, Y2K received a higher ABVS score than Midwest. Midwest's lower ABVS score for past performance was due to its lower than average score for timely delivery on past contracts. This lower score, the agency determined, "indicated strong potential for poor performance." AR at 4. The agency concluded that "with the weapons system criticality of the item and supply availability situation making on time delivery a key factor, the 16.8% price differential or \$467.40, in awarding to the second low offeror, Y2K, with the lower performance risk, was the best value to the government." Id. at 5.

After Midwest was notified that DLA had issued a purchase order to Y2K, it protested the award to the agency. The agency denied the protest, and Midwest timely protested to our Office.

Midwest complains that DLA improperly awarded the purchase order to a higher priced vendor. It contends that there is no reasonable basis to make award given the large differential in price. We review an agency's evaluation to ensure that it is fair and reasonable, and consistent with the evaluation criteria stated in the solicitation and with applicable procurement statutes and regulations. Godwin Corp., B-290291, June 17, 2002, 2002 CPD ¶ 103 at 3.

Here, the record shows that the agency fully considered the differences in price and reasonably found that the lower price was not worth the higher performance risk, given Midwest's history of providing less timely delivery than Y2K. Although Midwest disagrees with the agency's determination, it has provided nothing to show it to be unreasonable. Moreover, particularly in light of the criticality of the part and the necessity for timely performance, we find this determination reasonable.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ Midwest also complains that the agency failed to issue its decision on the agency-level protest until more than 5 months after it was filed. The agency explains that this was due to administrative oversight. AR at 7. In any event, this allegation does not provide a basis for overturning the award and thus does not provide a valid basis for protest. 4 C.F.R. § 21.5(f) (2005).