



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: Spacesaver Storage Systems, Inc.

File: B-298881

Date: December 11, 2006

Jane Glass for the protester.

John R. Cohn, Esq., U.S. Marine Corps, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that procuring agency improperly accepted higher-priced quotation over protester's lower-priced, technically acceptable quotation is denied where solicitation called for a vendor selection on "best value" basis and agency reasonably determined that awardee's quoted product was superior to protester's such that paying higher price was warranted.

DECISION

Spacesaver Storage Systems, Inc. protests the issuance of a purchase order to Staller Enterprises, Inc. under request for quotations (RFQ) No. 144228, issued by the U. S. Marine Corps for weapons storage systems.

We deny the protest.

The RFQ provided for issuance of an order on a "best value" basis applying the following evaluation factors (in descending order of importance): technical aspects, quality, delivery, final installation date, past performance, and price. With respect to the technical aspects factor, the quoted storage racks were required to meet six requirements: able to accommodate high security locks; rust resistant; non-marring weapon holders; metal end panels (high pressure laminate not permitted); locked racks not accessible from the front, back, top or sides; and each rack capable of operating independently. The RFQ further provided that the agency did not intend to hold discussions before selecting a vendor.

Spacesaver and Staller submitted quotations.¹ The Corps found that Staller's product met or exceeded all technical requirements and was superior in design, materials, and durability to Spacesaver's, and that Staller provided the most comprehensive installation plan. In contrast, the agency found that Spacesaver's product suffered from deficiencies, including racks that could not be secured by high security locks, high pressure laminate rather than the required metal end panels, and weapon holders constructed of metal coated with plastic, which would wear and cause metal to metal contact and result in rusting. Based on this evaluation, the agency selected Staller's quotation as offering the best value to the government despite its higher price. Spacesaver protests that selection, arguing that its quotation should have been selected because it was technically acceptable and lower priced.

Where, as here, a solicitation states that the agency will select the quotation found to be most advantageous to the government, as opposed to selecting a quotation strictly on the basis of technical acceptability and lowest-price, the evaluation is not limited to determining whether a quotation is merely technically acceptable; rather, quotations may be further differentiated to distinguish their relative quality by considering the degree to which the quotations exceed the stated minimum requirements or will better satisfy the agency's requirements. Chicago Dryer Co., B-293940, June 30, 2004, 2004 CPD ¶ 137 at 4.

Here, the agency selected Staller's quotation over Spacesavers based on its conclusion that Staller met or exceeded each requirement of the solicitation, and offered valuable additional benefits.² For example, the record shows that Staller's quoted system included metal end brackets and was found to maximize floor space. In contrast, the agency found that Spacesaver's system either did not meet the solicitation requirements—for example, the end panels were high-pressure laminate rather than metal, as required—or was not of the same quality as Staller's—for

¹ Spacesaver submitted two quotations, one was for an automated system and one for a less expensive manually operated system. The agency preferred the automated system and therefore evaluated that quotation.

² Our discussion here is general in nature because Staller's quotation appears to contain information about its system that is proprietary to the firm. We did not issue a protective order in connection with this protest—under which such information would have been available to counsel admitted to the protective order—because Spacesaver elected not to retain counsel. Consequently, only a redacted version of the agency report was furnished to Spacesaver. Nonetheless, we have carefully reviewed the entire record in camera, including all of the agency's evaluation materials and the quotations submitted by the firms. DSC Cleaning, Inc., B-292125, June 25, 2003, 2003 CPD ¶ 118 at 2 n.2.

example, the weapon holders were plastic-coated metal, which could lead to rusting if the plastic wore off, rather than solid plastic.

Spacesaver asserts that the agency advised it verbally that high-pressure laminate end panels would be acceptable. However, as noted above, the RFQ specifically provided that high pressure laminate end panels were not permitted. Oral advice that conflicts with the unambiguous terms of a solicitation is not binding on the government and a protester relies on such advice at its own risk. Southwest Educ. Dev. Lab., B-298259, July 10, 2006, 2006 CPD ¶ 105. Spacesaver also takes issue with the agency's conclusion that its metal-coated plastic units are not as good as Staller's units constructed solely of plastic. However, the agency's rationale--that the plastic could wear off during use and subject the exposed metal to rusting and marring--appears reasonable, and Spacesaver's mere disagreement is not sufficient to establish that the agency unreasonably determined that Staller's plastic units are less likely to present these problems. See Kellogg Brown & Root Servs., Inc., B-298694 et al., Nov. 16, 2006, 2006 CPD ¶ __.³

Since the competing firms were specifically advised that this was a best value acquisition, there was nothing improper in the agency's making these qualitative distinctions between the quotations, or in its determining that Staller's higher-priced quotation represented the best value considering price and non-price factors.

The protest is denied.

Gary L. Kepplinger
General Counsel

³ Spacesaver asserts that the agency should have discussed the evaluated deficiencies with the firm. Where, as here, a solicitation provides for award without discussions, an agency may make award without discussions, unless discussions are determined to be necessary. See Sierra Military Health Servs., Inc.; Aetna Gov't Health Plans, B-292780 et al., Dec. 5, 2003, 2004 CPD ¶ 55 at 6-7 n.5; Facilities Mgmt. Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274 at 8. The Corps decided that it did not require further information to determine which quotation represented the best value to the government.