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**Comptroller General
of the United States**

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

Decision

Matter of: Dwight Tellier Church Organs, Inc.

File: B-292825

Date: December 9, 2003

Dwight Tellier for the protester.

Marilee D. Rosenberg, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's quotation and issued order to another vendor where protester's quotation failed to demonstrate compliance with stated requirements of solicitation.

DECISION

Dwight Tellier Church Organs, Inc. protests the rejection of its quotation and the issuance of a purchase order to Wolf Gang Music, Inc. under request for quotations (RFQ) No. 520-39-03, issued by the Department of Veterans Affairs (VA) for two church organs.

We deny the protest.

The RFQ, which was posted electronically on June 18, 2003, sought quotations for two church organs to be installed in the chapels of two VA health care facilities, one located in Biloxi, and the other in Gulfport, Mississippi. The RFQ set forth minimum specifications for each organ and provided that a failure to meet these requirements might result in rejection of the quotation. The RFQ further provided for award on a "best value" basis, with technical factors, consisting of compliance with specifications, location of dispatch office, and warranty, of slightly greater importance than price.

Among the minimum specifications for both organs was a requirement for "internal speakers, with two extra self-contained external speakers (with cabinets and relays)." In addition, the minimum specifications for the Biloxi organ included a

requirement for “divided expression pedals (great, swell, crescendo),” while the minimum specifications for the Gulfport organ included a requirement for “divided expression pedals (swell, great/pedal).”¹

Tellier submitted a quotation for two Hammond XC3M organs, each paired with a Leslie 814 speaker. Each organ was priced at \$19,995 (without trade-in of the existing organ) or \$16,995 (with trade-in of the existing organ). In response to the requirement (pertaining to the organs for both locations) for two extra speakers, Tellier’s Quotation stated:

The 814 Leslie is designed as a surround sound. Extra speakers are not needed for this application.

Tellier’s Quotation at 3, 5. In response to the requirement for divided expression and crescendo pedals for the Biloxi organ and the requirement for divided expression pedals for the Gulfport organ, Tellier’s quotation stated:

Due to the extremely controllable features of this organ, the divided expression pedal is not necessary. (These are all adjustable while playing in real time.) With the large amount of preset memory available on this organ a crescendo can be programmed on one bank of the preset memory.

Id.

The only other vendor to submit a quotation was Wolf Gang Music, Inc. On July 23, the VA issued a purchase order for two Allen organs to Wolf Gang. Wolf Gang’s price for the Biloxi organ was \$25,638, and its price for the Gulfport organ was \$19,598. Following an agency-level protest that the contracting officer denied on August 20, Tellier protested to our Office, arguing that it should have received the order since its quotation was “clearly the lowest price on a recognized highest quality organ suited to the needs of a multi-denominational chapel.”² Protest at 4.

¹ The contracting officer explains that expression pedals are volume control pedals; divided expression pedals are pedals that allow the organist to control the volume of the two manual (i.e., great and swell) keyboards separately.

² The protester also complained that the RFQ “contained nomenclatures that are registered trademarks of Allen Organ Company,” such as “MDS-Expander II,” and that it, as other than an Allen organ dealer, had no means of receiving the points associated with these minimum specifications and thus was effectively eliminated from the competition. Protest at 1. The VA correctly argued in its report that to be timely, any objection to the specifications would have had to be raised prior to the closing date for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003). Moreover, as explained more fully below, Tellier’s quotation for the

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In responding to Tellier's protest, the VA explained that Tellier's quotation was rejected because the protester failed to demonstrate compliance with the above-noted minimum specifications.

The protester takes issue with this determination, arguing that while its organ/speaker combination may not comply with the stated requirements of the RFQ, it does address the agency's underlying needs. In this connection, the protester argues that while the Hammond organ on which it quoted has only a single expression pedal, it offers an alternative means of volume control--i.e., "every stop (voice) on both manuals has a volume control called a drawbar," with 16 steps of sound level. Protester's Comments, Oct. 26, 2003, at 1. The protester analogizes the difference between the Hammond organ's system of volume control and the Allen organ's system to "the difference between the automatic gear shift in a vehicle being on the floor console versus the steering column." *Id.* at 1-2. Tellier further argues that while the Hammond organ does not have a crescendo pedal, it has preset keys that can be programmed for a crescendo effect. The protester also argues that while it did not offer two speakers, its single speaker has greater output than the two Allen speakers combined, and that, because the Leslie speaker projects sound from all sides, it can be heard by both organist and congregation when placed between them. (According to the protester, the reason for requiring two extra speakers is to enable both the organist and the congregation to hear the organ clearly.)

The protester's argument is in essence that because its organ/speaker combination meets what it perceives to be the agency's underlying needs--i.e., the capability of controlling volume on a less-than-full-organ basis, the capability to build a crescendo, and the capability to be heard by both the organist and the congregation--the VA should have viewed it as acceptable despite its noncompliance with the RFQ's stated requirements.

We disagree. It is the agency's role to define both its underlying needs and the best method of accommodating those needs, Allen Organ Co.--Recon., B-231473.2, Aug. 31, 1988, 88-2 CPD ¶ 196 at 3-4, and it is within the agency's discretion to reject as unacceptable products not meeting the requirements that it defines. C. Squared Corp., B-260291, June 6, 1995, 95-2 CPD ¶ 118 at 2. Moreover, the agency has offered a reasonable explanation as to why it required multiple speakers (as opposed to a single, powerful, multidirectional speaker, such as proposed by the protester), divided expression pedals (as opposed to a single pedal paired with a manual system of control), and a crescendo pedal (as opposed to a manually controlled crescendo

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Hammond organs was rejected for reasons other than noncompliance with requirements incorporating Allen Organ nomenclature, such as the one cited by the protester.

capability). In this regard, the contracting officer explains that more than one speaker is required to ensure that soft sounds (such as those likely to be produced during a memorial service) are equally distributed; that divided pedals allow the organist to adjust the volume of each keyboard separately, without removing his or her hands from the keyboard; and that the crescendo pedal allows the organist to add pre-determined mixes of instruments to the keyboards, without having to stop playing with either hand to hit a separate control.

The protester also complains that the contracting officer failed to allow it to demonstrate fully the capabilities of the Hammond organ prior to determining the content of the RFQ. In other words, the contracting officer wrote the RFQ around the characteristics of the Allen organ without adequately considering whether the Hammond organ, which contains different characteristics, was capable of equivalent or superior performance. This is another objection to the content of the RFQ. As previously noted, to be timely, any such objection would have needed to be raised prior to the closing date for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Accordingly, this argument is untimely and will not now be considered by our Office.

Finally, the protester alleges that the VA had decided to purchase Allen organs prior to the July 10 closing date for receipt of quotations, as evidenced by an announcement to that effect by the Acting Chief at a chaplains' meeting held in June. Protest at 2. While the remarks attributed to the Acting Chief, if made, were ill-advised, since they were reasonably interpreted by the protester as implying that its quotation would not receive full and fair consideration, as explained above, the record demonstrates that the VA had a reasonable basis for rejecting Tellier's quotation and issuing an order to Wolf Gang.

The protest is denied.

Anthony H. Gamboa
General Counsel