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

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## **Decision**

**Matter of:** Bulltrack-Watts II, Joint Venture

**File:** B-403032.2; B-403032.4

**Date:** December 16, 2010

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William A. Shook, Esq., Kelley P. Doran, Esq., and G. Matthew Koehl, Esq., Shook Doran Koehl LLP, for the protester.

David B. Kuhlman, Esq., Procopio, Cory, Hargreaves & Savitch LLP, for Larkor-MZT Team II, Joint Venture, the intervenor.

Pamela Reiner Waldron, Esq., Department of the Interior, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Selection of a higher-rated, higher-priced proposal was reasonable where, consistent with the solicitation's evaluation factors, the selection official found that the awardee's more specific experience outweighed the protester's lower proposed price.

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### **DECISION**

Bulltrack-Watts II, Joint Venture, (BTW), of Bremerton, Washington, protests the award of a contract to Larkor-MZT Team II, a Joint Venture, of Homedale, Idaho, under request for proposals (RFP) No. N2011101190 issued by the Department of the Interior, National Park Service, for a wastewater treatment system. BTW challenges the agency's evaluation of its proposal and selection decision.

We deny the protest.

### **BACKGROUND**

The RFP, issued as a competitive section 8(a) small business set-aside, provided for the award of a fixed-priced contract for the installation of a new vacuum-assisted wastewater collection system within the Lower Elwha Klallam Indian Tribe Reservation in the state of Washington. This work consists of converting tribal residences from septic tank waste systems to a reservation-wide waste collection system. The new collection system is composed of approximately four miles of vacuum mainlines, approximately three miles of service lateral lines, structures to

convert from gravity to vacuum collection, and a vacuum and lift station pump house to pump the wastewater several miles into an existing wastewater collection system.<sup>1</sup> Contracting Officer's (CO) Statement at 1.

A brand name vacuum system (manufactured by AIRVAC, Inc.) was identified, but offerors were allowed to propose an equal vacuum system. Offerors were informed that a manufacturer's field representative of AIRVAC or the offeror's approved "equal" vacuum system supplier must be proposed to satisfy the requirement that the representative be present during installation of the system to supplement the agency's inspection of the system. RFP, Specifications, § 02537, at 30-32; see also RFP amend. 3, at 6.

The RFP stated that award would be made on a best value basis, considering the following evaluation factors: technical, past performance, and price. The technical and past performance evaluation factors, when combined, were stated to be approximately equal in importance to price. RFP § M.1, at 118. The technical factor included the following subfactors, listed in descending order of importance: technical approach, proposed construction schedule, prime contractor experience, and key subcontractors.

With respect to the technical approach subfactor, offerors were informed that the agency would evaluate the offeror's (and/or their primary subcontractor's) approach to performing this project, including evaluating the offeror's familiarity with the construction of "gravity and/or vacuum" waste collection systems. The RFP requested that offerors identify no more than 10 examples of past projects where the offeror's approach had been successfully applied. RFP § M.1, at 117. With respect to the prime contractor experience subfactor, the RFP provided that the offeror's experience in construction projects of similar scope, type, and size would be evaluated. Offerors were requested to submit no more than five projects demonstrating its experience as a prime contractor on projects of similar type and size. Id. at 118. With respect to the key subcontractors subfactor, offerors were informed that subcontractors "with more relevant and similar experience to this project" would be rated more favorably. Id.

With regard to the past performance factor, the RFP provided that the offeror's and its subcontractor's past performance would be evaluated for quality, timeliness, and business relations. Id. Offerors were instructed to provide references for past performance on projects of the same scope and complexity as the system being solicited by the RFP.<sup>2</sup> Id. at 115. Offerors were also informed that the agency, in its

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<sup>1</sup> Unlike a gravity-based system, a vacuum system uses differential air pressure to move wastewater.

<sup>2</sup> The RFP did not specify the number of references to be provided.

past performance evaluation, may contact references or use sources other than those provided by the offeror. Id.

The agency received nine proposals, including the protester's and the awardee's. After evaluating the proposals, the agency established a competitive range of four proposals, including that of BTW, Larkor, and L&N/MKB, Joint Venture. The agency conducted discussions, and received revised proposals. Initially, the award was made to L&N.

BTW protested the award to our Office. In response, Interior stated that it would conduct further discussions with the competitive range offerors, obtain and evaluate revised proposals, and make a new selection decision. Based on this corrective action, we dismissed BTW's protest as academic.

During the discussions that followed, BTW was provided with the agency's evaluation ratings for the firm's proposal under each of the technical evaluation subfactors and under the past performance factor. BTW was also provided with a narrative description of the evaluated strengths and weaknesses in its proposal. Agency Report (AR), Tab 16, Interior's Discussions Letter to BTW, at 1-2. For example, BTW was informed that, although its proposal received a good rating under the technical approach subfactor, the protester had provided "few relevant examples from past, 1 project similar, but military, not residential (wastewater treatment)" and that it had "provided a general discussion, not specific for this project." Id. at 1. With regard to the prime contractor experience subfactor, Interior informed BTW that, although the agency found its identified projects to be relevant, BTW's experience was with gravity rather than vacuum systems. Id. at 2.

Upon receipt of revised proposals, BTW's and Larkor's proposals were evaluated as follows:<sup>3</sup>

		<b>BTW</b>	<b>Larkor</b>
<b>Technical</b>		<b>GOOD</b>	<b>EXCELLENT</b>
	Technical approach	Good	Excellent
	Construction schedule	Excellent	Excellent
	Prime contractor experience	Good	Good
	Key subcontractors	Good	Excellent
<b>Past Performance</b>		<b>GOOD</b>	<b>EXCELLENT</b>
<b>Price</b>		<b>\$7,673,000</b>	<b>\$8,281,600</b>

<sup>3</sup> Under the technical approach subfactor, an excellent rating reflected a proposal with exceptional strengths, no significant weaknesses or deficiencies. A good rating reflected a proposal that has strengths and minor weaknesses that were more than offset by the strengths. AR, Tab 5, Source Selection Plan, at 7.

AR, Tab 19, Technical Evaluation Panel (TEP) Report, at 2-3.

BTW's overall good rating under the technical evaluation factor reflected the evaluators' judgment that BTW's proposal had some strengths but a number of minor weaknesses. For example, under the technical approach subfactor, the TEP noted that BTW's revised proposal did not provide technical details describing how BTW would perform the work, and failed to address the project's challenges and issues. Id. In addition, the evaluators found that BTW did not provide specific examples of how its technical approach had been applied in the past. Similarly, under the prime contractor experience subfactor, the TEP found that although BTW had good construction management experience, it had not demonstrated experience "with the collection portion of this work." Id. at 5. Under the key subcontractor subfactor, the TEP noted that BTW's proposed key subcontractor personnel had appropriate education and good experience, but also noted that BTW would be performing most of the work itself, and that most of BTW's own personnel did not have waste collection experience.

Larkor's overall excellent rating under the technical evaluation factor reflected the TEP's judgment that Larkor had many strengths and no weaknesses under the subfactors of technical approach, construction schedule, and key subcontractors. With regard to the technical approach subfactor, the evaluators found that Larkor had submitted a very good, detailed narrative, citing relevant project experience showing how its approach had been applied in the past. Id. at 5-6. Larkor's excellent rating for the key subcontractor subfactor reflected the TEP's judgment that Larkor proposed experienced subcontractors, and that Larkor had proposed [DELETED]. Id.; CO's Statement at 4. Larkor also received an excellent rating under the past performance factor based upon the TEP's judgment that, although some problems had been identified with the awardee's management of its subcontractors, this had been addressed with strong oversight, and its ratings were excellent otherwise. AR, Tab 19, TEP Report, at 6.

The CO, the source selection authority for this procurement, met with the TEP and reviewed the TEP's evaluation of the offerors' revised proposals.<sup>4</sup> CO's Statement at 5. He concluded that Larkor's proposal reflected the best value to the agency. AR, Tab 20, Amended Source Selection Memorandum at 10. In comparing Larkor's and BTW's proposals, the CO recognized that BTW had proposed a lower price, but found that Larkor's higher rating reflected technical superiority that outweighed the protester's price advantage. In particular, the CO found that Larkor's proposal of [DELETED]. In contrast, BTW proposed [DELETED]. See id. at 7; see also CO's

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<sup>4</sup> The CO also reviewed L&N's revised proposal and concluded that it no longer reflected the best value to the government. L&N filed its own protest of this procurement. See L&N/MKB, Joint Venture, B-403032.3.

Statement at 5 (“The lowest priced firm, BTW, was found not to be the best value because it ranked third in the technical ranking and it did not provide any demonstrated experience with the vacuum assisted wastewater collection system, a key part of the project.”)

The CO also noted that, although BTW’s past performance was rated good, the wide range of comments received (from average to outstanding past performance) together with the fact that the BTW lacked specific vacuum system experience, indicated a higher level of performance risk than did Larkor’s past performance. Id. at 7-8.

## DISCUSSION

BTW challenges the agency’s determination that Larkor’s higher-priced proposal offered the best value to the agency and raises a number of challenges to the evaluation of its proposal. Because the CO’s selection decision is premised upon Larkor’s specific vacuum system experience, which the CO found outweighed BTW’s price advantage, we focus our review upon BTW’s arguments that crediting Larkor’s experience was inconsistent with the stated evaluation scheme and unreasonable.

BTW does not contest that Larkor proposed a subcontractor with specific vacuum system experience, nor does BTW contend that it has such experience.<sup>5</sup> Rather, BTW argues that the RFP stated that either “gravity and/or vacuum” collection systems were equally acceptable. In support of this argument, BTW points to the technical approach evaluation factor, which states that offerors were to provide a narrative and examples from past projects addressing the offeror’s “familiarity with construction of collection systems (gravity and/or vacuum).” RFP at 115. BTW also complains that the CO’s reliance in his selection decision upon Larkor’s specific vacuum system experience is unreasonable because the vacuum system is a minor portion of the overall work solicited here and BTW proposed to provide an AIRVAC representative to be onsite during the installation and testing of the AIRVAC vacuum system.

In reviewing protests of an agency’s evaluation and selection decisions, it is not our role to reevaluate submissions; rather, we examine the record to determine whether the agency’s judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester’s mere disagreement with an agency’s judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

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<sup>5</sup> BTW also does not contend that it proposed a subcontractor with such experience.

Here, the solicitation provided that experience with vacuum systems would be considered under a number of technical evaluation subfactors. That is, the agency would evaluate an offeror's approach and understanding of the project under the technical approach subfactor, and would consider the offeror's familiarity with gravity and/or vacuum systems. The RFP also provided that the agency would assess the offeror's and its key subcontractor's relevant experience. See RFP § M.1, at 117-18. Agencies may properly take into consideration specific experience in making qualitative distinctions between proposals, so long as the specific experience is logically encompassed by or related to the RFP's requirements and stated basis for evaluation. M&W Constr. Corp., B-288649.2, Dec. 17, 2001, 2002 CPD ¶ 30 at 7; see also MELE Assocs., Inc., B-299229.4, July 25, 2007, 2007 CPD ¶ 140 at 7 (an agency may reasonably accord greater evaluation credit for specific experience directly relevant to the work to be performed under the solicitation). Here, we find that specific experience with vacuum systems is logically encompassed by the technical evaluation factor and is directly related to the work solicited here. Moreover, we do not agree with BTW that the solicitation's statement that the agency would evaluate offerors' familiarity with either gravity or vacuum systems indicated to offerors that experience with either type of system would receive equal credit.

We also find no merit to BTW's argument that the vacuum system was such a minor part of the overall work that it was unreasonable for the CO to find that Larkor's more specific experience outweighed BTW's price advantage. See Protester's Comments at 2. The very work solicited here is for the installation of a vacuum wastewater system, as opposed to a gravity-based system. Although BTW contends that installation of a vacuum system is not complex, this does not demonstrate that the agency was unreasonable in its judgment that specific experience installing a vacuum wastewater system offered a lower performance risk than that presented by an offeror with no such experience. In this regard, we do not agree that BTW's proposal to have an AIRVAC representative on-site during BTW's installation of the vacuum system reduced the advantage of having a contractor, like Larkor, with specific experience installing a vacuum wastewater system. As the agency notes, the RFP required all firms to have an AIRVAC or approved equal representative on-site during installation and testing. BTW, as did Larkor, complied with this solicitation requirement. BTW did not propose that the AIRVAC representative would perform or supervise the installation and testing of the system. See BTW's Technical Proposal, Factor 4, at 1. In this regard, BTW does not dispute Interior's conclusion that BTW itself would perform the installation.

BTW raises a number of other challenges to the evaluation of its experience under the various technical evaluation subfactors. None of these other challenges provide any basis to question the CO's determination that Larkor's more specific experience was of more merit than BTW's general experience. In any event, we find no basis to conclude that the agency's evaluation of BTW's proposal was unreasonable. For example, BTW complains that its proposal identified numerous examples of its experience with gravity systems, for which Interior did not provide it credit. The

agency responds in this regard that BTW's proposal provided very general discussions of the firm's projects, and provided "little if any detail" regarding the completed gravity systems. Supp. AR at 6. We find, from our review of the record, that the agency reasonably concluded that BTW's proposal provided little detail regarding its completed projects.

BTW also protests the agency's evaluation of its past performance, complaining that Interior considered projects other than those BTW identified for its past performance evaluation. BTW contends that a number of these additional projects were not relevant. BTW asserts that, considering only the five projects that BTW identified for its past performance, its performance was comparable, or superior, to Larkor's and should have also received an excellent rating, rather than a good rating.<sup>6</sup>

We find that Interior, in its evaluation of offerors' past performance, was not limited to considering only the projects that the offerors identified for their past performance evaluation, but could reasonably consider other past performance information. In this regard, the RFP specifically informed offerors that the agency may contact references or use sources other than those provided by the offeror. See RFP § M.1, at 115. Where a solicitation contemplates the evaluation of offerors' past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. In this regard, an agency is not generally precluded from considering any relevant past performance information, regardless of its source, see, e.g., NVT Techs., Inc., B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5, and, in fact, in some circumstances has an affirmative obligation to consider past performance information that is "close at hand." See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

We also find no basis to question Interior's assessment that BTW's past performance was good, but not excellent.<sup>7</sup> BTW's identified past performance projects received varying assessments from average to outstanding. See BTW's Technical Proposal,

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<sup>6</sup> BTW did not protest the evaluation of Larkor's past performance, other than to contend that it should have received the same adjectival rating as Larkor. The record does not show that BTW and Larkor were treated disparately.

<sup>7</sup> An excellent rating reflected excellent performance in quality, timeliness, and business relations areas, which considerably surpasses requirements for the project, and had no significant weaknesses or deficiencies. A good rating reflected acceptable past performance, but few, if any, exceptional features, and that weaknesses are outweighed by strengths. AR, Tab 5, Source Selection Plan, at 8.

Factor 5; see also AR, Tab 18, Past Performance Questionnaires. The agency's consideration of BTW's other projects also indicated varying quality assessments, which would not indicate excellent past performance, as this rating was defined by the agency. Moreover, the CO had personal knowledge of one of BTW's additional projects, for which the CO found BTW had some negative performance issues. Supp. CO's Statement at 7-8. Although BTW raises a number of challenges to the agency's assessment of this particular project<sup>8</sup> and to a number of other additional projects, it simply does not show that its past performance was entitled to an excellent rating (that is, that its past performance reflected performance that surpassed the solicitation's requirements and reflected no significant weaknesses). At best, BTW's objections reflect no more than its disagreement with the agency's judgment.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>8</sup> BTW asserts that it did not get an opportunity to address the firm's negative past performance with respect to the project for which the CO had personal knowledge, but the record shows that the firm did, in fact, get such an opportunity. See Supp. CO's Statement at 4.