



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SWR, Inc.

File: B-276878

Date: July 29, 1997

Timothy S. Swindall for the protester.

Michael Briskin, Esq., and Elizabeth M. Grant, Esq., Defense Logistics Agency, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation identified price and past performance as equally weighted evaluation criteria, identified form on which firms were to provide past performance information, and advised firms of the use to which the form would be put and the manner in which past performance would be evaluated, selection of higher-priced quote submitted by firm with higher past performance rating was reasonable and consistent with the stated evaluation scheme; protest that form used for past performance evaluation was insufficient to distinguish between firms is untimely, since the solicitation clearly described the use to which the form would be put.

DECISION

SWR, Inc. protests the issuance of a purchase order to Technical Specialties, Inc. (TSI) under request for quotations (RFQ) No. SP4700-97-Q-0001, issued by the Defense Logistics Agency (DLA) for maintenance of computers. SWR asserts that the agency lacked a reasonable basis for its evaluation of quotes and selection of TSI.

We deny the protest.

This requirement was initially issued on December 31, 1996, as a request for proposals to supply parts and labor necessary for remedial and preventative maintenance of government-owned microcomputers and peripheral equipment located at the DLA headquarters complex at Ft. Belvoir, Virginia and other DLA-supported activities in the Washington, D.C. metropolitan area. On January 23, 1997, DLA converted the solicitation to a small purchase RFQ, in accordance with Federal Acquisition Regulation (FAR) Part 13. As amended, the RFQ contemplated the issuance of a fixed-price, time-and-materials purchase order for a performance period not to exceed either a maximum funding ceiling of \$50,000 or 1 year, whichever occurred earlier. The RFQ stated that award would be made to the firm

submitting the technically acceptable quotation offering the best value to the government, based on a "comparative assessment" of past performance and price, which were ranked as equal factors.

The solicitation described the evaluation of past performance as follows:

Evaluation of past performance will be a subjective but impartial assessment based upon a consideration of all relevant facts and circumstances. It will not be based upon absolute standards. The Government is seeking to determine whether the offeror has consistently demonstrated a commitment to customer satisfaction and timely, quality service in the same or similar acquisitions. This is a matter of judgment.

The RFQ advised potential quoters that the agency would evaluate past performance in accordance with a past performance questionnaire attached to the solicitation. The RFQ instructed quoters to fill in the first page of three copies of the questionnaires, providing information on their three most recent similar contracts, and that the agency would then forward the questionnaires to the activities listed for an assessment of past performance. This assessment would include five areas: timeliness of performance, quality of supplies delivered or services performed, problem identification and resolution, cost containment/pricing issues, and customer service. While the agency reserved the right to consider information obtained from other sources, it advised quoters that primary emphasis would be upon responses to the past performance questionnaire.

By the March 18 closing date, 12 quotations were received. The protester submitted the low price; the awardee was second low. Eight firms, including the awardee, received a past performance rating of "outstanding." The protester received an overall past performance rating of "satisfactory." The contracting officer noted that TSI had received higher ratings from its customers in all five areas of past performance, historically providing timelier, higher quality, and overall better customer service. The contracting officer noted that timelier service would result in less down time (and, therefore, more productive time) for the customer. Higher quality service would, he noted, result in fewer repeatable breakdowns. Similarly, he anticipated that TSI's superior record for identification and resolution of problems would result in less down time. The contracting officer determined that, inasmuch as the anticipated price savings from TSI's higher quality service would outweigh the relatively small estimated difference between TSI's and SWR's prices, TSI's quote represented the best value to the government. Accordingly, on April 21, the agency issued a purchase order to TSI; 1 week later, SWR filed this protest with our Office.

SWR challenges the contracting officer's reliance on the information obtained during the evaluation of past performance. The protester asserts that the past

performance questionnaire, while adequate to confirm a firm's basic ability to perform, does not provide enough specific technical information to decide whether the past performance of any firm warrants payment of a price premium. The determination here that the awardee might deliver in a more timely manner or might provide more reliable or higher quality service is, SWR contends, "speculative." SWR argues that, since it submitted a technically acceptable quotation and is a responsible contractor,¹ the agency should have based its selection on the remaining selection criterion of price.

While SWR may be, as it claims, the responsible firm submitting the lowest-priced, technically acceptable quote, an agency is free to reasonably use evaluation criteria to select other than the responsible firm submitting the lowest-priced, technically acceptable response to a solicitation, so long as the solicitation disclosed the evaluation criteria used. See Miltope Corp.; Aydin Corp., B-258554.4 et al., June 6, 1995, 95-1 CPD ¶ 285 at 14 (same, in context of negotiated procurement). In a best value procurement, such as the instant case, an agency may select a higher-rated, higher-priced quotation or offer for award, where the agency reasonably determines in accordance with the stated evaluation criteria that the superiority of the higher-rated quotation or offer outweighs the price advantage of the lower-rated one. Dynamic Aviation--Helicopters, supra, at 3-4. As discussed below, the record here supports the evaluation and the selection of TSI, based on its higher past performance rating relative to SWR, as both reasonable and consistent with the stated selection criteria.

The record shows that, from three respondents evaluating the five areas of past performance indicated on the past performance questionnaire, SWR received 13 "satisfactorious" and 2 "outstandings." As noted above, the agency evaluated the protester's past performance as "satisfactory" overall. By contrast, TSI received 2 "satisfactorious" and 13 "outstandings," for an overall rating of "outstanding." Specifically, from those respondents rating the timeliness of service, TSI received two "outstandings" and a "satisfactory," while SWR received three "satisfactorious." On portions of the questionnaire relating to the quality of services provided, TSI

¹We note that the comparative assessment of past performance that occurred here was not a responsibility determination. An agency may use traditional responsibility factors, such as experience or past performance, as technical evaluation factors, where, as here, a comparative evaluation of those areas is to be made. Advanced Resources Int'l, Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348 at 2. A comparative evaluation means that competing proposals will be rated on a scale relative to each other as opposed to a pass/fail basis. Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 3. SWR's responsibility and technical acceptability--its basic willingness and ability to perform--are not at issue here.

received three "outstandings," while SWR received three "satisfactories." With regard to the containment of costs, TSI received three "outstandings" while SWR received one "outstanding" and two "satisfactories." Since TSI scored more highly in all these areas of the evaluation, we do not find it unreasonable for the agency to anticipate timelier, higher quality service from TSI. Specifically, the agency asserts that, considering an average repair time of 1.3 hours, and the lack of productivity for employees when a computer fails, \$6 more per hour is a small price to pay for a speedier and more reliable resolution to a computer malfunction. As the selection decision states, the contracting officer determined that SWR's relatively modest price advantages would be rapidly eroded, were SWR to prove less efficient in performing repairs or less sparing in ordering replacement parts. Under these circumstances, we cannot conclude that the agency's determination that TSI offered the better value, as between SWR and TSI, was unreasonable.

To the extent that SWR asserts that the questionnaire did not provide enough information to support the evaluation and selection decision, or that DLA did not provide adequate criteria for respondents to rank past performance, its protest is untimely. The questionnaire and evaluation scheme were clearly set forth in the RFQ; SWR does not deny that it was aware of the exact contents and format of the questionnaire prior to submitting its quotation on March 18. Protests based upon alleged improprieties in an RFQ which are apparent prior to the time set for receipt of quotations must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1997); East West Research, Inc.-Recon., B-236994.2, Nov. 22, 1989, 89-2 CPD ¶ 496 at 2. Since the protest was not filed until after a purchase order was issued to TSI, any objection to the agency's use of the questionnaire is untimely.

The protest is denied.

Comptroller General
of the United States