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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Nick Chorak Mowing

**File:** B-280011.2

**Date:** October 1, 1998

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Sam Z. Gdanski, Esq., for the protester.

Anthony G. Beyer, Esq., Environmental Protection Agency, for the agency.

Katherine I. Riback, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Contracting agency's decision to modify statement of work after receipt of initial quotations to reflect its actual needs is unobjectionable where offerors were given an equal opportunity to revise their quotes based on the reduced requirement.

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## DECISION

Nick Chorak Mowing protests the issuance of a purchase order to Bill Christopher Enterprises under request for quotations (RFQ) No. RT-98-00295, issued by the Environmental Protection Agency (EPA) for certain full-service landscape maintenance and management services. Chorak complains that the agency exhibited bias and conducted a "price auction."<sup>1</sup>

We deny the protest.

The RFQ, issued under simplified acquisition procedures on March 26, 1998, sought quotes to provide full-service landscape maintenance and management at two locations of the National Health and Environmental Effects Laboratory complex in Corvallis, Oregon. The types of groundskeeping activities included in the statement of work (SOW) were lawnmowing and thatch removal; tree and shrub pruning; debris removal; application of bark dust in landscaped areas; weed and insect pest control in lawn and landscaped areas; application of fertilizers and pesticides by a state of Oregon licensed pesticide applicator; and parking lot and sidewalk sweeping. RFQ SOW at 4. The RFQ contemplated the issuance of a 1-year, fixed-price purchase order to the vendor whose quotation represented the best

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<sup>1</sup>Chorak also protested the agency's evaluation of the protester's past performance, which our Office previously denied in a separate decision.

value to the government, and indicated that the quotations would be evaluated on the basis of past performance, adequacy and completeness of proposed work plan, and price. Id. at 9.

The EPA received quotations from Nick Chorak Mowing and Bill Christopher Enterprises in response to the RFQ. The proposed prices were \$23,988 and \$31,069.08, respectively. The project officer evaluated each vendor's work plan, past performance references, and price. The agency engaged in discussions during which each firm was notified of specific deficiencies in its work plan and was provided an opportunity to provide a compliant revised work plan.

During discussions, the contracting officer sent a facsimile to Christopher which identified deficiencies in its quote and concluded with the following postscript: "P.S. Your quote is more than what we had in mind for this effort. I'd like to discuss your offer." Memorandum from the Contracting Officer to Bill Christopher Enterprises 2 (Apr. 23, 1998). Christopher responded to the identified deficiencies that same day by facsimile. In that response Christopher reduced its original quote by \$1,000, offering a revised quote of \$30,069.12, and stated that it could provide an additional unspecified price reduction if the agency would reduce the fertilizer requirements to twice per year, instead of three times per year, and allow lawn clippings to be left on the lawn rather than bagged. Letter from Bill Christopher Enterprises to the Contracting Officer (Apr. 23, 1998). On April 23, the contracting officer notified Chorak and Christopher by facsimile that the agency had reduced the number of required fertilizer applications from three to two per year, and invited each firm to submit a revised quotation in response to the reduced requirements.

Christopher submitted a very slightly reduced quote of \$29,916 in response, which remained substantially higher than Chorak's quote of \$23,988.<sup>2</sup> The contracting officer concluded after reviewing Chorak's past performance references that there would be "significant risks" that Chorak's performance would be unsatisfactory. Contracting Officer Basis for "Best Value" Award Memorandum at 2. The agency also determined that three deficiencies remained in Chorak's revised work plan. Christopher received an overall past performance rating of "acceptable." The agency also determined that Christopher's revised work plan conformed to the SOW requirements. Accordingly, the contracting officer determined that Christopher's higher quote represented the best value to the government and issued a purchase order to Christopher on April 30. This protest followed.

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<sup>2</sup>Chorak did not reduce its price in response to the reduction in the SOW requirements.

Chorak argues that the agency improperly engaged in a "price auction." Chorak acknowledges that the agency did not reveal its price during discussion with Christopher, but, argues that "the fact that Christopher was given the opportunity to choose what portion of the Solicitation to change . . . coupled with the fact that Christopher was told that his proposal was too high, should be considered price auctioning." Protester's Comments, July 14, 1998, at 2.

Solicitations issued after January 1, 1998, such as this one, are governed by the Federal Acquisition Regulation (FAR) as amended by the Federal Acquisition Circular (FAC) No. 97-02, which includes the Part 15 rewrite. While the predecessor Part 15 included constraints on the government's use of "auction techniques," FAR § 15.610(e) (June 1997), the rewrite does not contain such a provision. Section 15.306(e) now sets forth specific limitations on exchanges with offerors by Government personnel involved in an acquisition. Section 15.306(e)(3) proscribes the revealing by government personnel of an offeror's price without that offeror's permission, but explicitly provides that, "the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion."

Here the record establishes that the agency conducted discussions consistent with the legal requirements outlined above. The contracting officer did not reveal either offeror's quote to the other. Instead the contracting officer notified Christopher that she considered its price too high, which is permissible under the revised regulation.

During the course of discussions with Christopher, the agency considered Christopher's suggestion that it reduce the number of fertilizer applications and allow the grass clippings to remain on the lawn, and while the agency rejected Christopher's grass clippings suggestion, it concluded that it was appropriate to reduce the number of fertilizer applications in the SOW. The protester has not asserted, and the record does not suggest, that this revised requirement fails to reflect the agency's actual needs. Where, as here, an agency discovers that a solicitation overstates its needs, the proper remedy generally is revision of the solicitation to reflect the agency's actual needs, and affording offerors an opportunity to respond to the revision. Brisk Waterproofing Co., Inc., B-256138.3, June 30, 1994, 94-1 CPD ¶ 394 at 3-4. Accordingly, we see no basis to object to the agency's reduction of the SOW fertilizer requirement, on which each offeror was provided with an opportunity to submit a revised quote.

The protester inaccurately asserts that Christopher was "permitted to make changes in the SOW." Amended Protest, June 24, 1998, at 4. In fact, the agency evaluated Christopher's suggestions during discussions, and then decided what best would satisfy its needs, adopting one recommendation which had only a minimal price impact. The agency's adoption of that suggestion is unobjectionable; government procurement officials, who are familiar with the conditions under which supplies,

equipment, or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the government's actual needs, and therefore, are best able to prepare appropriate specifications. See AGEMA Infrared Sys., B-257168, Aug. 10, 1994, 94-2 CPD ¶ 68 at 4.

Finally, the protester argues that the contracting officials were biased in favor of Christopher and against Chorak. This allegation is not supported by the record. Chorak has provided nothing more than speculative comments that the agency may have acted in bad faith. The specification change which Chorak sees as evidencing this bias was unobjectionable, as discussed above, and had a negligible impact on Christopher's price. This simply does not provide a sufficient basis to find bad faith or improper conduct on the part of the agency. HBD Indus., Inc., B-242010.2, Apr. 23, 1991, 91-1 CPD ¶ 400 at 4-5.<sup>3</sup>

The protest is denied.

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<sup>3</sup>To the extent that Chorak argues that it was not afforded enough time to respond to the revised SOW, this argument is untimely. Alleged improprieties which do not exist in the initial solicitation which are subsequently incorporated into the solicitation must be protested not later than the next closing time following the incorporation. 4 C.F.R. § 21.2(a)(1) (1998).