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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Lynwood Machine & Engineering, Inc.

**File:** B-287652

**Date:** August 2, 2001

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Howard N. Carpenter and Nick Berkem for the protester.  
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## DIGEST

It was reasonable for agency to consider poor performance record of protester's proposed special projects manager in evaluating protester's past performance, where protester itself lacked a performance record with respect to the required services, and the information available to the agency indicated that the special projects manager would play an important role in performing the contemplated contract.

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## DECISION

Lynwood Machine & Engineering, Inc. protests the award of a contract to SAF Engineering Associates, Inc. under request for quotations (RFQ) No. SP0833-00-Q-0171, issued by the Defense National Stockpile Center (DNSC), Defense Logistics Agency (DLA), for material handling services. Lynwood challenges the determination that its quotation was unacceptable.

We deny the protest.

The RFQ, issued for commercial items and utilizing simplified acquisition procedures, requested quotations for the stacking, banding, and weighing of approximately 3,972 metric tons (MT) of zinc, and approximately 78,564 MT of lead, at the DNSC facility in Mechanicsburg, Pennsylvania. The work is preparatory to sale of these materials by DLA. The contractor will be required to handle a minimum of 200 MT per day. Because of the presence of fine particles of lead and lead components on the ingots and in the soil in and around the storage areas, the RFQ warned of potential health hazards and included requirements for testing and the use of protective clothing and respirators.

Award was to be made to the vendor whose quotation offered the best value to the government based on three factors: experience, past performance, and price. Experience and past performance combined were considered significantly more important than price. In connection with the evaluation of past performance, vendors were required to submit three references concerning projects within the last 2 years covering work the same as or similar to that required under the RFQ.

Five vendors, including Lynwood and SAF, submitted quotations. Lynwood's price of \$998,685.60 was low, and SAF's price of \$1,065,606.36 was the next low. For experience, Lynwood received a score of 3 out of 5 possible evaluation points, while SAF received a score of 5 points. For past performance, Lynwood received 3 of the 10 possible points, while SAF received 8.3 points. The agency also conducted a preaward survey of Lynwood which, because of unsatisfactory performance by Lynwood's proposed special projects manager and a lack of relevant performance/experience on the part of Lynwood itself, led to a recommendation that no award be made to Lynwood. As noted in the Recommendation for Award, the agency concluded that Lynwood lacked a record of acceptable past performance; Lynwood's quotation therefore was determined to be technically unacceptable. Contracting Officer's Statement at 5; Recommendation for Award at 4. DLA determined that SAF's proposal represented the best value, and made award to that firm. After receiving a debriefing, Lynwood filed this protest.

## EXPERIENCE

Lynwood argues that its score under the experience factor was unreasonably low, noting that SAF received a higher score despite the fact that Lynwood was established in 1978, while SAF was not established until 1991, and that Lynwood's experience was evaluated as equal to SAF's in a previous procurement.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition. Environmental Tectonics Corp., B-280573.2, Dec. 1, 1998, 98-2 CPD ¶ 140 at 4. When reviewing protests against an allegedly improper evaluation, we will examine the record to determine whether the agency met this standard and reasonably exercised its discretion. Lynwood Machine & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ \_\_ at 4. The evaluation of experience was reasonable.

The agency explains that the evaluation focused on each vendor's demonstrated ability to provide managers and personnel familiar with handling metals like lead and zinc, rather than on the length of time a company had been in existence. We find nothing unreasonable in this focus. Regarding the actual scoring, the record indicates that, while SAF had performed materials handling contracts for DNSC in the prior 2 years, including contracts involving the handling of lead and zinc, and employed an experienced workforce, Lynwood did not have any experience with high volume, uniform stacking and banding of ingots, the work contemplated under the RFQ. Rather, Lynwood's quotation and the preaward survey indicated that

Lynwood specializes in machining, welding, fabrication, repair and material handling of large scale castings, forgings, steel pipe, and machinery. There thus was a reasonable basis for the agency to score SAF higher under this factor.

As for the prior procurement where Lynwood received the same score as SAF, the agency explains that the evaluation of Lynwood's experience there was based on Lynwood's representation that it had acquired a materials handling operation from another firm whose experience was similar to SAF's. The protester did not make the same representation in its quotation here and thus did not receive a similar score. While Lynwood did propose to hire experienced former SAF personnel, including a former SAF employee to serve as the project manager, the agency simply concluded that this employee experience was not equivalent to SAF's demonstrated relevant corporate experience. In any case, it did not provide any evidence (such as letters of intent or commitment) showing that these employees would accept employment with Lynwood. Under these circumstances, the agency was not required to credit Lynwood with the employees' experience. See Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 3; SWR Inc., B-286044.2, B-286044.3, Nov. 1, 2000, 2000 CPD ¶ 174 at 2-3. The agency ultimately concluded that Lynwood's experience was not equivalent to SAF's, and we find nothing unreasonable in this aspect of the evaluation.

#### PAST PERFORMANCE

Lynwood asserts that its past performance score (3 of 10 possible points) was inconsistent with the reference ratings it provided the agency. Lynwood further asserts that it should have received evaluation credit for SAF's past performance based on its proposed hiring of former SAF employees. In addition, Lynwood asserts that it was improper for the agency to downgrade its proposal based on the past performance record of its proposed special projects manager; according to Lynwood, that manager's proposed role was limited and his record did not support a finding of poor past performance.

The evaluation in this area was reasonable. The evaluators reduced Lynwood's reference rating score from 4.7 to 3 because the references were based on work (machinery and steel fabrication, maintenance of material handling devices, welding, blasting, painting and repairing tanks) that was not similar to the RFQ work (stacking, banding, and handling of ingots, with significant health hazards).<sup>1</sup> Since the RFQ requested past performance information concerning the same or similar work, vendors were on notice that similarity would be considered; the agency thus

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<sup>1</sup> Fifty percent of the past performance score was based on ratings furnished by the vendor's references (Lynwood received 3 points) and 50 percent on the report of the agency's safety and health officer (0 points).

reasonably reduced Lynwood's score. See J. A. Jones Grupo de Servicios, SA, B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 7.

The agency's evaluation of Lynwood's past performance with regard to SAF and the proposed SAF employees also was unobjectionable. As noted, the RFQ required vendors to furnish references from which the agency could establish the quality of the firm's performance. While Lynwood's quotation proposed to employ former employees of SAF as the project manager, material handlers, banders, and forklift operators, and described the experience of the proposed project manager, the quotation did not include specific references which the agency could contact to establish the quality of the past performance of the proposed project manager. The agency reports that the contracting officials performing the evaluation and source selection also had no personal knowledge of the proposed project manager's record of performance. In any case, even if there were employee past performance information that might have benefited Lynwood, the fact remains that Lynwood's quotation did not include any evidence establishing the proposed project manager's and the other employees' willingness to work for Lynwood on this contract. In our view, it was reasonable for the agency to focus on Lynwood's own performance record, rather than that of SAF and its employees.

The agency also reasonably considered Lynwood's proposed special projects manager in evaluating the firm's past performance. While the protester asserts that this manager's involvement in the contract would be "solely administrative," Protest at 4, Lynwood's quotation indicated that he would have a more significant role. The quotation stated that the project manager would have "as his assistant" the proposed special projects manager, "who also has experience completing lead handling contracts for DLA." Lynwood also furnished DNSC with an organizational chart that showed the special projects manager organizationally between the company president and the project manager; that is, the line of responsibility for performing the contract was shown as running from the company president to the contract project manager, through the special projects manager, who also was shown as interfacing with the employee responsible for quality assurance. In addition, the special projects manager represented Lynwood during the preaward survey. The agency therefore reasonably determined that the special projects manager's involvement in the contract warranted giving significant consideration to his past performance record in the evaluation.

The information available to DLA indicated a record of poor past performance by the proposed special projects manager while working for other companies as a point of contact and supervisor for various material handling projects at DNSC depots. This information revealed that the special projects manager had required constant government supervision; did not maintain the proper number of units per bundle; did not maintain tight banding of units; overused government-supplied banding material; was absent for large portions of the workday, allowing workers to perform without supervision; and failed to report some injuries suffered by employees.

Recommendation for Award at 3. DLA reasonably downgraded Lynwood under the past performance factor based on this information.

Lynwood asserts that the above criticisms are inconsistent with the overall performance ratings--3 out of a possible 5 points--the company received on those projects, reflected in two past performance questionnaires furnished in the course of a 2000 procurement for material handling services at a different facility. However, the specific detailed criticisms of the special projects manager's performance summarized above were provided by the same depot managers who responded to the 2000 questionnaires, and whose evaluation Lynwood cites in support of its argument. Further, notwithstanding an overall performance rating of three, one of the 2000 questionnaires includes observations that the contractor could not meet daily requirements and needed constant oversight to ensure that the statement of work was being followed. This criticism is consistent with the criticism reported in the agency's preaward survey, and thus further supports the conclusion that there is no basic inconsistency between the reports received during the preaward survey and the 2000 questionnaires. Moreover, to the extent that there are differences between the reports, we note that the focus of the reports was different: the 2000 questionnaires presumably were evaluations of the performance of the contractor as a whole, while the reports received during the preaward survey apparently focused on the proposed project manager's personal performance.<sup>2</sup>

Given Lynwood's limited corporate performance of similar work, coupled with the special projects manager's more extensive, but poor performance record, the agency reasonably determined that Lynwood's past performance was unacceptable.

#### COMMERCIAL ITEMS

Lynwood asserts that the award to SAF was improper because the services provided by SAF would not qualify as "commercial items." Lynwood's argument is based on paragraph (5) under the definition of "commercial item" set forth at Federal Acquisition Regulation (FAR) § 2.101, which states in part that services are commercial when they are obtained from sources that offer them to the general public and the federal government contemporaneously and under similar terms and conditions. Lynwood asserts that SAF "is completely dependent on government contracts for its revenue" (unlike Lynwood) and therefore does not meet this requirement. Protest at 7.

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<sup>2</sup> We note that, since the contracting officer had no reason to question the information concerning the special projects manager, he reasonably could rely on the information without seeking to verify it or permitting the protester an opportunity to rebut it. Lynwood Machine & Eng'g, Inc., *supra*, at 7; see A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5.

As we held in denying a prior protest by Lynwood on this same basis, the lead handling services here do not fall within the scope of the language of paragraph (5) in the FAR § 2.101 definition of commercial items. By its terms, the paragraph (5) language applies only to procurements of services provided in support of commercial items, such as installation, maintenance, repair, and training. Lynwood Machine & Eng'g, Inc., supra, at 8. The services here fall outside of these specified categories. Although, as Lynwood notes, the definition includes a reference to “other services,” stacking, banding, weighing, and moving lead and zinc ingots are not support-type services in the same sense as the specified categories. We thus do not consider the services here to be covered by paragraph (5) of the FAR § 2.101 definition of commercial items.<sup>3</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup> Lynwood also asserts that these material handling services do not meet the standard set out in paragraph (6) of the commercial item definition in FAR § 2.101, which DLA states was the basis for its determination that this was a commercial item procurement. That paragraph defines commercial services as: “Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices . . . .” Asserting that the services do not fit under paragraph (6) is tantamount to arguing that this was not a proper commercial item procurement, an argument that Lynwood does not specifically raise. In any case, such an argument, concerning an apparent solicitation impropriety, would be untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2001).