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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Wood Cuts

**File:** B-403960.3

**Date:** May 19, 2011

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William L. Thomason for the protester.

Melissa D. McClellan, Esq., Department of Agriculture, 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

Protest that the agency failed to apply an evaluation preference for offering environmentally preferable products is denied where the solicitation did not provide for such a preference.

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## DECISION

Wood Cuts, of Thorne Bay, Alaska, protests the award of a contract to Ketchikan Ready Mix & Quarry, Inc., of Ketchikan, Alaska, under request for proposals (RFP) No. AG-0116-S-10-0062, issued by the U.S. Forest Service, Department of Agriculture, for the replacement of a recreational wood cabin. Wood Cuts contends that the agency failed to reasonably evaluate the protester's offer to use environmentally preferable products (EPP).<sup>1</sup>

We deny the protest.

## BACKGROUND

The RFP, issued as a HUBZone set-aside, provided for the award of a fixed-priced contract for the replacement of a wood cabin and associated structures at the Anan Bay site in the Tongass National Forest, Wrangell Ranger District, Alaska. Offerors were informed that award would be made on a best value basis, considering price

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<sup>1</sup> EPPs are "products . . . that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose." Federal Acquisition Regulation (FAR) § 2.101.

and the following technical evaluation factors: cabin design and material, past performance, experience of key personnel, project management, quality control plan, and worksite safety. The technical evaluation factors, when combined, were stated to be more important than price.

With regard to the cabin design and materials factor, the RFP stated that the cabin was to be made of solid wood, and that the agency preferred that it be made of Alaska Yellow Cedar, although Alaska Cedar or Western Red Cedar would also be acceptable. RFP at 12, 83.

The Forest Service received five proposals, including the awardee’s and the protester’s. The agency selected Ketchikan’s proposal for award, and Wood Cuts protested. In response to the protest, the agency took corrective action by reopening the competition, conducting discussions, requesting revised proposals, and making a new selection decision. We dismissed Wood Cuts’ protest as academic.

Following discussions, Wood Cuts submitted a revised proposal, in which the firm offered to construct the cabin using Alaska Yellow Cedar. See Wood Cuts Revised Proposal at 6. Wood Cuts also offered an “alternative environmentally preferable design” in which the protester proposed to use a combination of Alaska Yellow Cedar and other woods to complete the cabin. Id. at 3, 6 n.3, 6-7 n.4, 8 n.5. According to Wood Cuts, this design would use fewer “old-growth” Alaska Yellow Cedar logs and more environmentally preferable “young growth” logs. Wood Cuts contends that shifting away from the use of “old growth” wood is consistent with Forest Service policy. Id. at 2-4.

The agency again determined that award should be made to Ketchikan, and Wood Cuts filed a second protest with our Office. In response, the agency again decided to reevaluate the revised technical and price proposals, and we dismissed this protest as academic.

Upon reevaluation, Wood Cuts’ and Ketchikan’s revised proposals were assessed as follows:

	<b>Ketchikan</b>	<b>Wood Cuts</b>
Cabin design/materials	High confidence	Confidence
Past performance	High confidence	Confidence
Key personnel experience	High confidence	Confidence
Project management	High confidence	Confidence
Quality control	High confidence	High confidence
Worksite safety	High confidence	High confidence
Price	\$174,000	\$172,300

AR, Tab 6, Source Selection Decision, at 1.

The agency found that Ketchikan's proposal was superior to Wood Cuts, largely because the awardee offered a cabin design that reflected "a more upscale aesthetic," as compared to Wood Cuts' design, which the agency found to be more "rustic and utilitarian," and thus better suited for a less visited site. The agency also found that Ketchikan's key personnel had more construction experience working in remote sites than Wood Cuts, and that this experience would have value because the cabin's remote location would limit the frequency of government inspection. See id. at 2. The contracting officer, who was the source selection official for this procurement, recognized Wood Cuts' slightly lower price, but concluded that Ketchikan's technical superiority reflected the best value to the agency. Id.

The agency again selected Ketchikan's proposal, and this protest followed.

## DISCUSSION

In its protest, Wood Cuts makes numerous arguments, and incorporates by reference all of the arguments it raised in its prior protests. In its comments, Wood Cuts limited its objections to "the important issues raised." See Protester's Comments at 2. We address each of the objections that Wood Cuts identified in its comments.

Wood Cuts complains that the agency's assessment of its proposal under the cabin design and materials evaluation factor was unreasonable because the agency did not credit Wood Cuts for its offer to use EPPs in its alternative design. In this regard, Wood Cuts argues that the agency was required by statute and regulation to apply a preference for "young-growth" timber over the use of "old-growth" timber, such as Alaskan Yellow cedar. See Comments at 3-6. In support of its arguments, Wood Cuts cites to the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), Pub. L. No. 86-517, 74 Stat. 215, 16 U.S.C. §§ 528-531 (2006), and FAR subpart 23.7, Contracting for Environmentally Preferable Products and Services.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's evaluation was, in fact, in accord with the stated evaluation factors. Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4-5; Computer Assocs. Int'l, Inc., B-292077.3 et al., Jan. 22, 2004, 2004 CPD ¶ 163 at 6.

Here, the record shows that the agency evaluated Wood Cuts' and Ketchikan's proposals in accordance with the evaluation criteria identified in the solicitation. Although the protester contends that it should have received enhanced credit for offering (in its alternative design) to use EPPs, the RFP did not provide that offerors

would receive enhanced credit for using EPPs.<sup>2</sup> In fact, offerors were specifically informed (as Wood Cuts itself recognized in its basic proposal) that the agency preferred the use of Alaska Yellow Cedar. Wood Cuts' objections are grounded upon its belief that statutes and regulations, such as MUSYA and FAR subpart 23.7, require the agency to give an evaluation preference for the use of EPPs, even where the solicitation's evaluation criteria do not provide for such a preference. There is no merit to this argument. As an initial matter, there is no provision in the cited statute or regulation that requires the use of an evaluation preference in any particular procurement.<sup>3</sup> In any event, it is a fundamental principle of federal procurement law that a contracting agency must evaluate all offerors' proposals against the solicitation's stated evaluation criteria. See, e.g., Source Diversified, Inc., B-403437.2, Dec. 16, 2010, 2010 CPD ¶ 297 at 6.

Wood Cuts also protests that the agency did not consider whether Ketchikan, in performing the contract, will comply with the regulations of the Small Business Administration with respect to the value of work that a HUBZone concern must perform itself. Comments at 6-9. In this regard, Wood Cuts alleges that Ketchikan will not itself build the cabin, and will instead have the cabin manufactured "by an entity that is not HUBZone certified." Comments at 9. Despite Wood Cuts' assertions, there is nothing on the face of Ketchikan's proposal to indicate that the awardee will not itself be performing the work. Rather, the record shows that Ketchikan proposed to build the cabin itself and did not propose subcontracting this work. AR, Tab 5, Ketchikan Proposal.

Wood Cuts also challenges the contracting officer's selection decision, arguing that the contracting officer relied upon the awardee's "high confidence" ratings without considering the ratings in "any meaningful context." Comments at 10. This is belied by the record, however, which shows that the contracting officer specifically considered the basis for each firm's ratings and concluded that the awardee's higher rating reflected additional value that was worth the awardee's slightly higher price. See AR, Tab 6, Source Selection Document at 2. Although Wood Cuts disagrees with

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<sup>2</sup> The agency recognized in its evaluation that Wood Cuts' had offered to use "young growth" timber in its alternate design, and concluded that this was acceptable. See AR, Tab 8, Evaluation Worksheets.

<sup>3</sup> To the extent that Wood Cuts believes that the RFP's failure to provide an evaluation preference for EPPs violates statute, regulation, or government policy, this concerns an untimely challenge to the terms of the solicitation. Under our Bid Protest Regulations, protests of alleged solicitation improprieties must be filed before the time set for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2010).

the contracting officer's judgment in this regard, the protester's disagreement does not show that the selection decision was unreasonable. Encorp-Samcrete Joint Venture, B-284171, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

The protest is denied.

Lynn H. Gibson  
General Counsel