

Pietrovito

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Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Progressive Forestry Services, Inc.  
**File:** B-242881  
**Date:** June 10, 1991

Robert Zaharie for the protester.  
Peter J. Ruppel, Department of Agriculture, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

Award was properly made to the higher-priced, technically superior offeror in a negotiated procurement that provided for award to the offeror with the most advantageous offer, where the contracting officer reasonably determined, in accordance with the evaluation criteria, that the awardee's technical advantages outweighed the protester's lower-price, lower-rated offer.

## DECISION

Progressive Forestry Services, Inc. protests the award of a contract to Small Change Forest Works, Inc. under request for proposals (RFP) No. R1-5-91-6, issued by the Forest Service, Department of Agriculture, for tree planting services. Progressive contests the agency's determination that Small Change's higher-priced offer is more advantageous than Progressive's offer.

We deny the protest.

The RFP, issued as a total small business set-aside, sought firm, fixed-priced offers for the hand planting of trees of various sizes and species in the Pierce Ranger District of Clearwater National Forest, Idaho. Detailed specifications set forth instructions for site preparation, spacing, mixture of species, and tree planting. Offerors were informed that vehicle access might not be available to all work areas and a walk-in of up to 1/2 mile might be required.

The RFP provided that award would be made to the offeror whose technically acceptable proposal was the most advantageous to the government and listed, in descending order of importance, technical approach, record of past performance and organization as the technical evaluation factors. Subfactors were also stated for the technical approach and organization criteria. The RFP did not state the relative weight assigned to cost, and accordingly, cost was approximately equal in weight to the technical evaluation factors. See Jack Faucett Assocs., B-233224, Feb. 3, 1989, 89-1 CPD ¶ 113, aff'd, B-233224.2, June 12, 1989, 89-1 CPD ¶ 551.

Of the six offers received, the agency found four offers, including those of Progressive and Small Change, to be in the competitive range. Discussions were conducted, and best and final offers (BAFO) received. All four competitive range offerors were found to be technically acceptable. BAFO prices were as follows:

Timber West	\$186,568
Jacksonville	\$188,866
Progressive	\$190,144
Small Change	\$207,331

The contracting officer selected Small Change for award based upon his determination that Small Change's cost premium was outweighed by the firm's superior technical proposal. This protest followed. Subsequently, the agency made award to Small Change based upon the agency's written determination that urgent and compelling circumstances affecting the interests of the United States would not permit awaiting our decision in this matter.

Progressive objects to the contracting officer's determination that Small Change's technical proposal was superior to Progressive's, and that Small Change's technical superiority outweighed Progressive's \$16,000, or 8.3 percent, price advantage. Progressive does not contest the agency's evaluation of Small Change's technical proposal, which was found by the contracting officer to contain no weaknesses and to be the best submitted. Rather, Progressive disagrees with the agency's technical assessment that Progressive's technically acceptable proposal contained several deficiencies.

The determination of the relative merits of proposals is primarily a matter of agency discretion, which our Office will not disturb unless it is shown to be unreasonable. Computer Based Sys., Inc., B-240963; B-240963.2, Jan. 7, 1991, 70 Comp. Gen.     , 91-1 CPD ¶ 14. Award to an offeror with a higher technical rating and higher cost is proper where it is reasonably determined that the cost premium is justified, considering the technical superiority of the awardee's proposal, and the result is consistent with the evaluation criteria. See Pacific Architects and Eng'rs Inc., B-236432, Nov. 22, 1989, 89-2 CPD ¶ 494.

The agency identified three deficiencies in Progressive's BAFO, the most important of which was past performance. The Forest Service states that it had significant performance problems with Progressive on the prior contract for tree planting in the same district. Specifically, the agency noted performance deficiencies involving tree depth, spacing, micrositeing, shading and root configuration. The agency also recently rejected the firm's planting in the Upper Orofino unit for poor quality and required Progressive to pull up all the planted trees and replant the unit. This decision was the subject of a contracting officer's final decision that rejected Progressive's claim for payment for that unit and its replanting.

Progressive does not dispute that the firm had performance problems on the prior contract, but argues that these performance problems were the result of decisions made by the contracting officer's representative (COR). In particular, Progressive blames its overall quality problems on the COR's decision to require Progressive to plant the Upper Orofino unit while snow covered.

We find reasonable the contracting officer's assessment that Progressive's poor performance on the prior contract presented a significant performance risk. Although Progressive apparently disagrees with the contracting officer's judgment, the firm has provided no evidence, nor is there anything in the record, that indicates that the contracting officer's determination--that the performance problems were Progressive's fault--was erroneous.

In contrast, Small Change, which also has tree planting experience in the Pierce Ranger District, was evaluated as having an excellent performance record with outstanding plant survival. The Forest Service found that Small Change's production rates per planter were incredible and their quality consistently high. In addition, Small Change not only proposed key personnel in crew leader positions but also among planter positions, which led the agency to conclude that this degree of organizational consistency was a major reason for Small Change's excellent past performance.

The Forest Service also identified as a deficiency Progressive's failure to state how it intended to satisfy the RFP requirement to mix species through the planting unit, a problem which Progressive had on the prior contract. While Progressive contends that it adequately addressed this requirement, the record shows that Progressive's initial proposal did not show how it would satisfy this requirement, but only promised to mix tree plantings if directed by the agency. Despite the agency's specific request during discussions for more information concerning how Progressive would satisfy this requirement, the protester provided no further information in its BAFO concerning the mixing of species. Under the circumstances, the contracting officer reasonably found Progressive's treatment of this requirement to be a deficiency.

The Forest Service also states that Progressive's request for future price adjustments for walk-ins exceeding 1/4 mile created "price uncertainty" in Progressive's proposal. Progressive argues that access to the Pierce Ranger District terrain is "above average" and will not result in additional cost to the government. While Progressive apparently believes that there will be no walk-ins greater than 1/4 mile, its proposal shifts the risk of such access to the government, so as to require the government to pay for walk-ins exceeding 1/4 mile. We agree with the agency that Progressive's request for future price negotiations regarding access to work areas created uncertainty regarding Progressive's price that the contracting officer could consider in his cost/technical trade-off determination.

Based upon the evaluated deficiencies in Progressive's proposal, we find that the agency reasonably determined that Small Change's proposal, which contained no deficiencies or weaknesses and which demonstrated the firm's exceptional past performance, was technically superior to Progressive's. In this regard, the contracting officer concluded that Small

Change's superior past performance indicated that Small Change's planted seedlings should have higher rates of survival and faster growth. In addition, the contracting officer anticipated lower contract administration costs for Small Change because of that firm's higher per person production rates and possible higher prices for Progressive because of the protester's request for price adjustments for walk-ins exceeding 1/4 mile. Under these circumstances, the contracting officer could determine that Small Change's superior proposal outweighed Progressive's 8.3 percent price advantage and was thus the most advantageous to the government.

The protest is denied.

  
James F. Hinchman  
General Counsel