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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Safety Storage, Inc.

**File:** B-275076

**Date:** January 21, 1997

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

LTC David D. Franke, Capt. Robert C. Spinelli and Joseph H. Doyle, Esq.,  
Department of the Army, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Where request for quotations issued under small purchase procedures did not contain a late quotations provision, agency properly permitted a quoter to submit, after the closing date, additional evidence of its compliance with solicitation's warranty requirement.
  2. Protest that agency improperly waived floor load and interior square footage criteria for awardee is denied where: (1) record shows that awardee's design fully complies with floor load requirement; and (2) difference in interior square footage is slight, the awardee's product meets the agency's needs, and waiver of the requirement did not prejudice the protester.
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## **DECISION**

Safety Storage, Inc. (SSI) protests the award of a contract to LAMCO Industries under request for quotations (RFQ) No. DABT01-96-T-0018, issued by the Department of the Army for six steel prefabricated storage sheds for the 209th Military Police Company at Fort McClellan, Alabama. SSI contends that the Army improperly accepted a late submission from LAMCO and otherwise waived the solicitation's specified floor load and interior square footage requirements.

We deny the protest.

The RFQ was conducted as a brand name or equal small purchase procurement under Federal Acquisition Regulation (FAR) § 13.103(g). The solicitation's amended purchase item description identified the required shed by means of the protester's brand name and product number, and--of significance to this protest--required the shed to have an interior square footage of 198 feet, a "uniformly distributed [floor] load [capacity] of 500 p.s.f. [pounds per square foot]," and a 10-year structural

warranty. The solicitation advised quoters of "equal" shed models to submit "specification sheets" demonstrating compliance with the RFQ's purchase item description.

By the September 18, 1996 closing date, eight quotations were received. Five firms--including LAMCO--submitted quotations for shed model "Haz-Stor LK 1024"; one submitted a quotation for shed model "CBS-8-20." Two other offerors--including the protester--submitted quotations for the specified brand name: Safety Storage Shed Model 22N.

Although the protester's quotation was the lowest-priced, brand-name quotation, on October 3 the Army issued a purchase order to LAMCO for its lowest-priced, functionally equivalent ("equal") shed. On October 11, SSI filed this protest.

The record shows that on September 23, the Army requested a copy of SSI's 10-year structural warranty. In its protest, SSI contends that the Army improperly permitted LAMCO to submit evidence of its compliance with the RFQ's structural warranty requirement after the September 18 closing date. SSI also maintains that the Haz-Stor model proposed by LAMCO does not comply with either the solicitation's floor load capacity requirement or the interior square footage requirement.<sup>1</sup>

SSI's challenge to the Army's decision to accept a post-closing date submission from LAMCO is without merit. Agencies may use simplified procedures that "promote competition to the maximum extent practicable" for small purchases of property and services not expected to exceed \$100,000. 10 U.S.C. § 2304(g) (1994); 41 U.S.C. § 403(11) (1994). Under these procedures, agencies generally may seek and consider revisions to a quotation any time prior to the government's issuance of a purchase order. See DataVault Corp., B-248664, Sept. 10, 1992, 92-2 CPD ¶ 166. This is because, unlike a request for proposals or an invitation for bids, an RFQ does not seek offers that can be accepted by the government to form a contract. Rather, the government's purchase order is the offer which the proposed supplier may accept through performance or by a formal acceptance document. FAR § 13.108. Moreover, where, as here, an RFQ does not contain a late quotations provision--but merely requests quotations by a certain date--that date is not

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<sup>1</sup>SSI also contends that LAMCO's offered shed does not possess the identical corrosion protection system offered by the specified SSI model; however, the solicitation did not require the SSI corrosion system. In this regard, amendment No. 0001 to the RFQ changed the corrosion protection requirement from SSI's design specification of "corrosion protected steel; [United Laboratory] classified two-hour fire-rated" to a more generic requirement for unspecified "special coatings" to "minimize wear [and] corrosion" and "to reduce heat absorption."

considered to be a firm closing deadline. See A & B Trash Serv., B-250322, Jan. 22, 1993, 93-1 CPD ¶ 53. Thus, the Army's decision in this case to permit LAMCO to submit evidence of its compliance with the RFQ's structural warranty requirement is unobjectionable.<sup>2</sup>

SSI next contends that the awardee's proposed shed does not meet the RFQ's 500 p.s.f. floor capacity specification. SSI bases its argument on a simple computation; dividing the awardee's advertised storage capacity (49,000 pounds) by its interior square footage (196<sup>3</sup>), SSI argues that the resulting number--250--represents the maximum floor load capacity of the Haz-Stor shed.

Although the record indicates that the protester's calculation is a reasonable method for roughly calculating the shed's floor load capacity, the manufacturer of LAMCO's proposed shed--Haz-Stor Company--and the Army point out that other factors affect the floor capacity calculation in any particular case. Specifically, the record shows that both the grating material--which supports the shed's foundation--and the proximity of the floor support joint spans--which support the shed's structure--significantly affect the load the shed will bear; that is, a less durable grating material (e.g., wood) and wide spaces between joint spans will result in a diminished floor load capacity, whereas a heavier grating material (e.g., steel) and small widths between joint spans will enable the shed to support a much heavier uniform floor load. In this case, Haz-Stor's submissions show that the combination

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<sup>2</sup>SSI also contends that LAMCO's quotation failed to include sufficient descriptive data. However, where the descriptive literature submitted with an offer does not show compliance, the contracting agency may base a determination of acceptability on "any other information available to the contracting agency," even if that information was not included in the offer. See Barnard & Assocs., B-253367, Sept. 13, 1993, 93-2 CPD ¶ 157. In this case, the Army was able to evaluate LAMCO's offered shed based on descriptive literature set forth in the Army's contracting files, as well as descriptive data included with other quotations submitted for the same Haz-Stor shed model under this procurement.

<sup>3</sup>The protester argues that some of the descriptive literature regarding the awardee's proposed shed suggests an interior square footage of 181 or 191 square feet. Our Office has confirmed that these measurements do not pertain to the shed model quoted by the awardee. In this regard, Haz-Stor manufactures many different 1024 shed types--each 1024 model has a different wall thickness (in part depending on its required features, e.g., combustion protection) and therefore a different interior square footage. For this procurement, LAMCO submitted its quote based on the Haz-Stor LK1024 shed model--which has an interior square footage area of 196 square feet.

of the shed's grating material and joint span placement support a uniform floor load of 975 p.s.f.; consequently, we deny this protest ground.<sup>4</sup>

With regard to SSI's interior square footage argument, the record does show that despite the RFQ's stated requirement for an interior storage area of 198 square feet, the awardee's Haz-Stor shed offers an interior storage area of only 196 square feet. Generally, where a solicitation sets forth design features in very specific terms, offerors of an equal product must meet them precisely. Ross Cook, Inc., B-231686, Sept. 7, 1988, 88-2 CPD ¶ 216. However, if the discrepancy between the offered equal product and the stated brand name is minor, and the offered product will meet the agency's needs, a minor deviation in an offered equal product may be waived if there is no prejudice to the other offerors. Defense FAR Supplement § 211.270-1(b)(3); CryoMed, B-241605, Feb. 22, 1991, 91-1 CPD ¶ 202.

The Army reports that the slight variation in the Haz-Stor shed's interior square footage (2 feet) does not affect the suitability of the shed for its intended purpose of storing small quantities of petroleum products and related equipment. Moreover, despite specific requests from this Office for a showing of prejudice, SSI has failed to articulate how it would have altered its quotation had it known that a slightly smaller interior storage area of 196 square feet would meet the Army's needs. Under these circumstances, the Army's acceptance of LAMCO's offered Haz-Stor shed is unobjectionable. DataVault Corp., *supra*.

The protest is denied.

Comptroller General  
of the United States

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<sup>4</sup>Because Haz-Stor considers its grating material and joint span placement to be proprietary information, our description of Haz-Stor's submission is necessarily general. In this regard, while SSI did not have access to the details of Haz-Stor's design, it was on notice of the agency's general position that the grating material and joint span placement affect the floor load capacity, and thus that SSI's simple calculation, without taking into account these factors, did not represent an accurate measurement of floor load capacity. SSI did not attempt to refute the agency's position.