



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: RMG Industrial Sales

File: B-281632

Date: March 15, 1999

David R. Williams, Esq., for the protester.

Robert M. Andersen, Esq., U.S. Army Corps of Engineers, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where substantial activity had transpired in evaluating quotations prior to contracting agency's receipt of protester's amended final quotation, which was received after the deadline for submission of final pricing, agency was not required to consider that final quotation.

DECISION

RMG Industrial Sales protests the U.S. Army Corps of Engineers' refusal to consider RMG's revised quotation submitted in response to request for quotations (RFQ) No. DACW29-99-Q-0019, for replacement parts for the sector-gates of the Leland Bowman Lock on the Gulf Intracoastal Waterway in Vermilion Parish, Louisiana.

We deny the protest.

The RFQ was issued as a total small business set-aside on October 26, 1998, using local facsimile and electronic data interchange (EDI) techniques. The procurement was conducted under the simplified acquisition procedures set forth in part 13 of the Federal Acquisition Regulation. The time established for receipt of quotations was noon on November 2. The government estimate was \$80,000. Three quotations were received as follows:

RMG	\$94,643
Multi Metals, Inc.	\$99,045
Stewart Machine Co.	\$179,400

On November 3, the contracting officer concluded that the prices quoted were too high because of the short delivery schedule and possibly restrictive requirements relating to materials to be used in fabricating the parts. On November 5, the agency issued amendment No. 0001 which extended the delivery schedule for certain parts,

relaxed materials requirements and established close of business on November 9, 1998 as the time for receipt of revised quotations. Five quotations were received as follows:

RMG	\$89,887.60
Multi Metals, Inc.	\$90,849.00
Dixie Machine Welding & Metal Works, Inc.	\$95,765.85
Boland Marine Manufacturing Co., Inc.	\$106,773.00
Stewart Machine Co.	\$110,000.00

The contracting officer evaluated the revised quotations and conducted a review of RMG because the agency had no prior contracting history with the firm. He then contacted each vendor and asked for price verification by November 12 in an attempt to ensure that they had a clear understanding of the agency's requirements. Four verifications were received as follows:

Multi Metals, Inc.	\$89,099.00
Dixie	\$89,352.00
RMG	\$89,887.60
Boland Marine	\$104,300.00

Multi Metals, Inc. withdrew its quotation on November 16. On November 17 at about 3 p.m., the contracting officer telephonically contacted Dixie and offered to issue the firm a purchase order, which Dixie accepted verbally. Dixie was also informed that a formal confirmation under "contract" number DACW29-99-M-0057 would follow and was authorized to commence performance immediately. On the same day, the contracting officer then signed and issued a document entitled a "Purchase Order" bearing the "contract" number referred to in the telephone call and containing the following statement: "CONFIRMATION OF VERBAL AWARD ISSUED ON 17 NOV 1998." The agency reports that the "Standard Army Contracting System ('SAACONS') automatically generated and transmitted notice of award to the EDI system on November 17, 1998."¹ Agency Report at 2.

At 8:21 p.m. on November 17, after the close of business, RMG submitted a revised quotation in the amount of \$84,493.72 by facsimile. The contracting officer received the quotation on the morning of November 18. Thereafter, at approximately

¹The EDI entry was made available to the public at 11:05 a.m. on November 20. Protest, Dec. 3, 1998, final exhibit.

10 a.m., the contracting officer telephonically informed RMG that another vendor had been issued a purchase order and that the protester's quotation could not, therefore, be considered. Following the protester's receipt on November 23 of a letter effectively denying what the agency considered to be an agency-level protest filed on November 18, this protest was filed with our Office on December 3.

RMG's position is essentially that the contracting officer was required to consider the protester's final low quotation because no contract was in effect when the quotation was received. RMG bases its argument on the proposition that, in order for a binding contract to have been in effect, Dixie would have had to accept the agency's offer in writing. RMG concludes, therefore, that the contracting officer abused his discretion in refusing to consider the protester's final quotation.

The simplified acquisition procedures emphasize efficiency rather than formal procedures and, where using these procedures, an agency has considerable discretion in its approach, so long as it promotes competition to the maximum extent practicable. West Coast Research Corp., B-281359, B-281359.2, Feb. 1, 1999, 99-1 CPD ¶ ___ at 4. In circumstances such as here, where the solicitation does not contain a specific late quotations provision requiring receipt of quotations by a specified date in order to be considered but instead merely calls out a due date, the agency should normally consider any quotations received prior to the selection decision if no substantial activity has transpired in evaluating quotations. Adrian Supply Co., B-235352, Aug. 2, 1989, 89-2 CPD ¶ 99 at 2.

However, here the agency was not, even in the alleged absence of a contract between the Corps and Dixie, required to consider RMG's quotation. The contracting officer had already begun the purchase order issuance process by the time he actually received RMG's quotation. He had examined the quotations received, prepared an abstract, determined to issue a purchase order to Dixie, issued confirmation of a verbal agreement with Dixie, and dispatched notice to the EDI system. Thus, substantial activity in evaluating quotations and processing the purchase order had already occurred before the contracting officer was aware that a revised quotation had been submitted by RMG. As a result, the Corps was not required to consider RMG's late quotation. Id. at 3.

The protest is denied.

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