



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: Multi-Spec Products Corporation

File: B-287135

Date: March 30, 2001

Carolyn Stine for the protester.

Lynne E. Georges, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.

Henry J. Gorczycki, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly considered as acceptable a quotation stating a delivery period longer than identified in the request for quotations (RFQ) conducted under simplified acquisition procedures, and reasonably evaluated delivery, where the RFQ permitted firms to quote delivery periods longer than that requested, and stated that delivery would be an evaluation factor.

DECISION

Multi-Spec Products Corporation protests an award of a purchase order to Julian A. McDermott Corporation (JAMC) under request for quotations (RFQ) No. SPO560-01-Q-6250, issued by the Defense Logistics Agency (DLA), Defense Supply Center Philadelphia (DSCP), Pennsylvania, for electric lanterns.

We deny the protest.

The agency issued the RFQ on January 10, 2001 as a small business set-aside under the streamlined acquisition procedures of Federal Acquisition Regulation (FAR) Part 13. Agency Report at 2. The contemplated purchase price fell below the simplified acquisition threshold of \$100,000. See FAR § 2.101.

The first page of the RFQ was Standard Form (SF) 18 (Rev. 6-95). Block 6 of SF 18, which was completed by the agency, stated, "Deliver within 40 days [after date of

order (ADO)].” Block 11 provided items for the quoter to complete, including the following:

d. If delivery period shown in Block 6 is unacceptable, provide best possible delivery: _____.

The general instructions of the RFQ stated the following:

NOTICE: Best Value Buying: DSCP purchases at or below the [simplified acquisition threshold] are subject to Best Value Buying techniques. This includes, but is not limited to, . . . the Delivery Evaluation Factor Program and Contracting Officers’ individual determinations based on a comparative assessment of pertinent circumstances, including . . . delivery

RFQ at 5.

The agency received four quotations. Agency Report at 3. Multi-Spec’s quotation was the only one offering a delivery period of 40 days; the other quotes offered longer delivery periods. JAMC’s quotation had the longest delivery period of 150 days. JAMC’s price of \$51,067.50 was lowest, followed by Multi-Spec’s price of \$59,400. The delivery evaluation provided for dollar values to be added to each quoter’s price for each day it promises delivery beyond the requested 40-day delivery period. Once this adjustment was made, JAMC’s evaluated price was \$55,392.92, which was still the lowest evaluated price. Since Multi-Spec quoted the requested delivery of 40 days, Multi-Spec’s evaluated price was the same as its quoted price, which remained the next lowest. The contracting officer selected JAMC’s quotation for award. Agency Report at 3-4. This protest followed.

Multi-Spec alleges that JAMC’s quotation is unacceptable because its quoted delivery period exceeds the required delivery period stated in the RFQ. The protester alternatively alleges that the agency improperly included delivery as an evaluation factor contrary to the terms of the applicable simplified purchase agreement (SPA) previously issued by the agency, and that the evaluation of delivery beyond the 40-day period stated in the RFQ without proper notice in the RFQ created an unequal competition. Multi-Spec states that, had it known that the agency would consider delivery period beyond the 40 days stated in the RFQ, Multi-Spec could and would have quoted a price lower than JAMC’s.

The Competition in Contracting Act of 1984 (CICA) requires simplified procedures for small purchases of property and services in order to promote efficiency and economy in contracting, and to avoid unnecessary burdens for agencies and contractors. 10 U.S.C. § 2304(g)(1) (Supp. IV 1998); FAR § 13.002. Consistent with this requirement, purchases for an amount not greater than the simplified acquisition threshold are expressly exempted from the requirement that solicitations include a statement of all significant evaluation factors and subfactors that the agency

reasonably expects to consider. 10 U.S.C. § 2305(a)(2)(A). Nevertheless, all procurements, including those to which this exemption applies, must be conducted consistent with the concern for a fair and equitable competition that is inherent in any procurement. General Metals, Inc., B-249259 et al., Nov. 3, 1992, 92-2 CPD ¶ 319 at 4. In this regard, an agency must evaluate quotations on the basis set forth in the RFQ. Id.

Here, the RFQ stated the agency's desire for delivery "within 40 days." However, since the RFQ also expressly permitted firms to propose a different delivery period if they considered the 40-day period unacceptable, the stated request for delivery "within 40 days" cannot be construed as a mandatory requirement. The protester's contention to the contrary, that JAMC's quotation must be rejected as unacceptable for stating a delivery period in excess of 40 days, is inconsistent with the express terms of the RFQ. See Overstreet Elec. Co., Inc., B-283830, B-283830.2, Dec. 30, 1999, 2000 CPD ¶ 8 at 8 (solicitation must be read as a whole and in a manner that gives effect to all of its provisions).

The RFQ also expressly stated that delivery would be an evaluation factor. Thus, consistent with the concern for a fair and equitable competition, the agency was required by the terms of the solicitation to evaluate delivery. General Metals, Inc., supra, at 4-5. While the protester argues that a more specific statement was required in order to alert firms that delivery would be evaluated, particularly in light of the exemption from the CICA requirement to identify evaluation factors and subfactors applicable here, we cannot conclude that DSCP was required to state in the RFQ any given level of detail concerning the evaluation factors identified in this RFQ. Id. The only requirement is that the agency conduct the evaluation reasonably and consistent with the terms that are stated in the RFQ. Id. Here, the agency evaluated delivery by increasing the evaluated price of a quotation for each day the quoted delivery period exceeded the requested 40-day period. The evaluation of delivery thus treated shorter delivery periods as better. This is a reasonable evaluation of delivery, consistent with the notice in the RFQ stating that delivery would be evaluated.¹ Id.

¹ We have previously noted that, although not required, it may be desirable for the DLA to state in the RFQ a more detailed description of the delivery evaluation factor and its relative importance. General Metals, Inc., supra, at 4-5. We think the benefit to the government of providing more detail in an RFQ about the relative importance of early delivery is evident from the present record. The agency's apparent motivation for evaluating delivery is to reduce unnecessary costs to the government associated with excessive leadtime. Id. at 2 n.3. We note that here the evaluated additional cost of a delivery period nearly four times the requested period was small, if not insignificant, relative to quoted prices, as reflected in the fact that the ranking of closely competitive priced quotations with substantially different delivery periods did not change as a result of the evaluation. See Agency Report at 3-4. It is

(continued...)

As noted, Multi-Spec alleges that the terms of a SPA applicable to DSCP procurements of this type misled the protester.² Specifically, the SPA stated the following:

when delivery will be an evaluation factor for award of the Purchase Order, one or both of the following statements will be included in the RFQ:

- (A) Delivery will be an evaluation factor in award. Earlier delivery is desired and will be given preference.
- (B) Price and delivery will be considered as award factors. Preference may be given for earlier delivery.

Agency Report, Tab 3, SPA, at 21. The protester contends that, since neither of these statements appeared in the RFQ, Multi-Spec reasonably concluded that the RFQ did not provide for evaluation of delivery and presumed that delivery periods longer than the period stated in the RFQ would not be accepted by the agency.

We do not think that the protester's conclusion is reasonable. Even assuming, arguendo, that the SPA requires such a verbatim incorporation of one or more of these statements as a prerequisite for evaluating delivery, the clear statement in the RFQ that delivery would be evaluated cannot be ignored. At best, the protester reasonably could have concluded that the RFQ contained an obvious defect or ambiguity, which it could have raised as a basis for protest prior to the closing date

(...continued)

reasonable to assume, as alleged, that the protester would have quoted a much lower price had it elected not to meet the requested short delivery period and proposed a delivery period of a much longer length as stated in the other quotations. Thus, in such situations, the agency, by not alerting competitors to the relative importance of delivery, unnecessarily may be foregoing potential cost savings resulting from lower quotation prices. It does not appear prudent to seek superiority in one area (such as delivery leadtime here) at the expense of potential cost savings, when there is little burden associated with issuing an RFQ that can help accomplish both goals, i.e., by disclosing the relative importance of any evaluation factor that the agency does choose to identify in the RFQ.

² The agency agrees that the terms of the SPA apply to this procurement. Agency Report at 2. The SPA states that its terms “may be used in conjunction with simplified purchases,” and that the SPA “establishes terms, conditions, and provisions applicable to [RFQs] and Purchase Orders issued by [the agency] for simplified purchases not exceeding the Simplified Acquisition Threshold.” Agency Report, Tab 3, SPA, at 1, 3. The RFQ, however, did not incorporate or otherwise reference the SPA.

for submission of quotations. 4 C.F.R. § 21.2(a)(1) (2000). The protester did not do this. Given that the RFQ stated that delivery would be evaluated, the agency was required to evaluate delivery.

The protest is denied.

Anthony H. Gamboa
General Counsel