

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D. C. 20548

10,587

FILE: B-194611

DATE: June 27, 1979

MATTER OF: Roberts Oxygen Company, Inc.

DLB 01939

[Protest Alleging That Purchasing Agent Provided Misleading Information]

DIGEST:

Where three offers were received for procurement conducted under small purchase procedures and there are conflicting statements by protester and procuring agent as to whether protester was advised that procurement was competitive--procuring agent stating protester was so informed--there was a reasonable number of offers for procurement and protester has not met burden of affirmatively proving that procuring agent's actions were founded upon fraud or intentional misconduct.

Roberts Oxygen Company, Inc. (Roberts), protests against purchase order DADA15-79-M-6298 for home therapy oxygen awarded by the Walter Reed Army Medical Center (WRAMC) to Medi Home Care for the period of March 28, 1979, through September 30, 1979. AGC 00216

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Roberts, the predecessor contractor, contends the WRAMC purchasing agent led it to believe when it was awarded the purchase order for the period of January to March 1979 that it would be awarded a subsequent sole-source 1-year contract if it performed satisfactorily, but before the purchase order expired another purchasing agent asked if it would extend its prices for 1 year without any indication that competitive offers were being solicited for the extended period.

The WRAMC purchasing agents deny Roberts' contentions. The first purchasing agent denies that he explicitly or implicitly advised Roberts that the purchase order would be extended for 1 year on a sole-source basis if performance was satisfactory. The second WRAMC purchasing agent states that she advised Roberts that the purchase order was being competed and that it was for the period of March 29 to September 30, 1979.

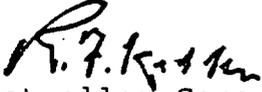
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The procurement was conducted under the small purchase procedures in Defense Acquisition Regulation section 3, part 6. Our review of these types of procurements is limited to cases of fraud or intentional misconduct or instances where the procuring agency has not made a reasonable effort to secure price quotations from a reasonable number of offerors. Custom Burglar Alarm, Inc., B-192351, January 18, 1979, 79-1 CPD 30.

Three offers were received for the immediate procurement. Therefore, there was a reasonable number of offers for the procurement. Ikard Manufacturing Company, B-192578, February 5, 1979, 79-1 CPD 80.

The only evidence as to whether Roberts was misled by the purchasing agent to submit a "noncompetitive" offer is conflicting statements from Roberts and the purchasing agent. Therefore, Roberts has not met its burden of affirmatively proving that the purchasing agent's actions were founded upon fraud or intentional misconduct. Reliable Maintenance Service Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

Accordingly, the protest ^{was} is denied.


Acting Comptroller General
of the United States