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DECISION



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

FILE: D-207106

DATE: September 21, 1982

MATTER OF: Le Prix Electrical Distributors, Ltd.

DIGEST:

1. Although request for quotations (RFQ) did not inform quoters whether a single award or multiple award was contemplated, award based on the lowest aggregate price was consistent with the small purchase selection procedures.
2. Protester's contention that RFQ failed to advise offerors that award might be based on the lowest aggregate price, raised after the closing date for receipt of quotations, is untimely under subsection 21.2(b)(1) of our Bid Protest Procedures 4 C.F.R. § 21 (1982), since the alleged impropriety was apparent prior to that date.
3. Where RFQ requires inclusion of all applicable taxes, quote which excludes taxes should not have been accepted for award.

Le Prix Electrical Distributors, Ltd. (Le Prix), protests the award by the Federal Aviation Administration (FAA) of item 1 under request for quotations (RFQ) No. DTFA07-82-Q-0015 to RTE Corporation (RTE).

The RFQ was issued under the small purchase procedures described in Federal Procurement Regulations (FPR) subpart 1-3.6 (1964 ed.) for three electrical transformers (items 1 and 2) and six "loadbreak elbows" (item 3). Le Prix contends it should have been awarded item 1 since it submitted the low quote for this item. Le Prix also states that it is a small business unlike RTE; and that it offered a 10-week delivery schedule as compared to the 13-week schedule offered by RTE.

For the reasons that follow, we sustain the protest.

Of the six vendors submitting quotes, RTE submitted the lowest total price and was issued a purchase order on April 7, 1982, in the amount \$5,223. Le Prix's total price was \$5,335.00. For item 1, RTE quoted a price of \$3,237.00, compared to Le Prix's quote of \$3,011.

The RFQ did not indicate whether a single award based on the lowest aggregate price or multiple awards based on the low individual item prices would be made.

We disagree with Le Prix's contention that it should have received an award for item 1 as the low quoter.

We are not aware of any requirement mandating the inclusion of a provision calling for multiple awards in this type of situation. On the contrary, FPR § 1-3.600 (1964 ed. amend. 206), which sets forth the policies and procedures for purchases under \$10,000, provides in § 1-3.602(c):

"When quotations are received on a number of related items (such as hardware items, spare parts for vehicles, or office supplies, etc.), one purchase order shall normally be issued to the firm quoting the lowest aggregate prices rather than issuing more than one purchase order on the basis of the lowest quotation on each item."

The FAA takes the position that the award in this case was in accordance with the above-cited provision. Since RTE submitted the lowest aggregate price, we find no legal basis to question the award.

Le Prix contends that there are Federal regulations which provide that offers will be evaluated on the basis of multiple awards when a cost saving of \$100 or more to the Government will occur. Therefore, Le Prix contends that an award to it for item 1 would have saved the Government \$226. We disagree. Although Le Prix does not refer to a specific regulation, we assume it is referring to Department of Transportation Procurement Regulation § 12-2.201(a), which provides that in all cases involving invitation for bids for supply and service contracts, where multiple awards are to be considered, the

Government in evaluating bids to determine lowest aggregate cost will assume a \$100 administrative cost for each award if multiple awards were made. This regulation is inapplicable here since the procurement involved an RFQ and not an invitation for bids. Further, even if the regulation were applicable, RTE's low aggregate bid was less than if the Government had made two separate awards based on low unit prices, after taking into consideration the \$100 administrative cost for each award.

Le Prix contends that its status as a small business should have been given consideration in the award since RTE is a large business. The agency has responded that since the procurement was not set aside for small business, there was no legal basis to give special consideration to Le Prix's small business status.

We believe the procurement should have been a small business set-aside. Under 15 U.S.C. § 644(j) (Supp. III, 1979), procurements which are subject to the small purchases procedures are to be set aside unless the contracting officer is unable to obtain offers from two or more small businesses. However, Le Prix's raising of this issue after receipt of quotations is untimely under section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1982)), which requires protests based on improprieties apparent prior to the closing date for receipt of quotations to be filed prior to that date. Moreover, as noted, infra, since the contract has been performed, corrective action is not possible.

Regarding Le Prix's contention that it offered a shorter delivery schedule than RTE, which should have been considered, this fact is irrelevant since the RFQ permitted firms to offer delivery schedules later than May 14, 1982, and there was no evaluation factor stated in the RFQ for faster delivery.

Le Prix, in its July 15, 1982, comments on the agency report, raises for the first time its contention that the solicitation was ambiguous for failure to disclose that award might be made to the firm submitting the low total lot price. This basis of protest is untimely under section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1982)) since it concerns an alleged solicitation impropriety and, therefore, any protest was required to be submitted prior to the April 5, 1982, closing date. See Center for Employment Training, B-203555, March 17, 1982, 82-1 CPD 252.

However, upon review of RTE's quote, we note that, as submitted, it should not have been accepted for award. On its quotation, RTE typed the following: "PRICES DO NOT INCLUDE STATE OF TEXAS TAXES." Further, RTE attached to its quotation its standard "Terms and Conditions - Transformers" which stated "Price is without sales, use, excise or other taxes for which buyer assumes liability whenever applicable to this contract."

The RFQ, at clause 36 of the General Provisions, advised:

"(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties."

Therefore, based on its quotation, which took exception to a material requirement of the solicitation, award to RTE was improper.

Because the items have been delivered under the contract, corrective action is not possible.

The protest is sustained in part and dismissed in part.

for Harry P. Van Cleave
Comptroller General
of the United States