

DECISION

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

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FILE: B-212078**DATE:** November 15, 1983**MATTER OF:** Le Prix Electrical Distributors, Ltd.**DIGEST:**

1. Where solicitation called for brand name "or equal" light fixtures, but the agency then decided that only brand name fixtures would meet its needs, award should not have been made without giving all offerors the opportunity to submit quotations on brand name fixtures only. Therefore, the protester, which submitted a late quotation, is an interested party since, if the agency had amended the solicitation to give all offerors the opportunity to submit quotations on brand name fixtures only, protester would have been able to compete.
2. Protest is sustained where solicitation called for brand name "or equal" light fixtures and then agency decided that only brand name fixtures would be procured without giving all offerors the opportunity to submit quotations on brand name fixtures only.
3. Claim for quotation preparation costs is denied since it cannot be determined that protester had substantial chance of receiving the award had there been a resolicitation.

Le Prix Electrical Distributors, Ltd. (Le Prix), protests the award of a purchase order to Revere Electric Supply Company (Revere) for delivery of light fixtures under request for quotations (RFQ) No. DAKF23-83-Q-0939 issued by the Department of the Army (Army) and requests quotation preparation costs.

We sustain the protest, but deny the claim for quotation preparation costs.

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The RFQ solicited offers for delivery of light fixtures, citing Hubbell brand name identification numbers "or equal." The closing date for receipt of quotations was May 13, 1983. The Le Prix quotation offering Hi-Tek fixtures as "equal" was not received until May 16. However, the Army determined on May 16 that only Hubbell fixtures would suffice. Due to an urgent need for the fixtures, the Army awarded the purchase order to Revere on May 18 as the low quoter offering Hubbell fixtures. Revere made immediate delivery.

Le Prix contends that all quoters should have been given an opportunity to submit quotations on Hubbell fixtures if an equal was not acceptable and that, therefore, the RFQ should have been canceled and a resolicitation issued.

The Army first contends that Le Prix's protest should be dismissed as academic because its offer was late and not low, thus making Le Prix ineligible for award and not an interested party which may protest to GAO. However, we find that the Army should not have regarded Le Prix's quotation as late. Our Office has found that a request for quotations by a certain day and time, without a late quotations provision, reasonably cannot be construed as establishing a firm closing deadline for the receipt of quotations. Rather, the Army has merely indicated to quoters when the award is anticipated to be made--on May 13. By not establishing a definite timeframe, the contracting agency is not precluded from considering a quotation received prior to award if no substantial activity has transpired in evaluating quotations or prejudice occurred to the other competing offerors. See CMI Corporation, B-211426, October 12, 1983, 83-2 CPD ____. Since the Army did not determine that only Hubbell fixtures would meet its needs until the day Le Prix's quotation was received and award was not made until 2 days later, we find that Le Prix's quotation should not have been determined late. Further, while LePrix's quotation was not low for equal fixtures, if it had been given an opportunity to submit a quotation on Hubbell fixtures only, it might then have submitted the low quotation and been eligible for award. Cf. Singleton Contracting Corporation, B-211259, August 29, 1983, 83-2 CPD 270. Therefore, Le Prix is an interested party.

Concerning the Army's determination that only Hubbell fixtures would meet its needs, once a decision is made to relax, increase or modify the government requirements, an amendment should be issued and offerors given an opportunity

to quote on the changed needs. Standard Conveyor Company; Rohr Industrial Systems, Inc., B-187805, March 29, 1977, 77-1 CPD 220. Consequently, it was improper for the Army to depart from the provision in the RFQ that light fixtures "equal" to Hubbell fixtures would be considered without informing all the offerors of the departure and giving all of them an opportunity to submit quotations on Hubbell fixtures only.

As for the Army's contention that it did not have time to resolicit due to the urgent need for the fixtures, the Army could have resolicited orally pursuant to Defense Acquisition Regulation § 3-604.2(a) (1976 ed.) so as to be able to make award in a short timeframe. See PSI-TRAN Corporation, B-195014, October 26, 1979, 79-2 CPD 296.

The Army also contends that the protest should be denied despite the procurement impropriety because small purchase procedures were used here and this Office has denied protests where small purchases were made under simplified procedures and any impropriety was made in good faith by the contracting agency. See e.g., R. E. White & Associates, Inc., 61 Comp. Gen. 320 (1982), 82-1 CPD 294; Tagg Associates, B-191677, July 27, 1978, 78-2 CPD 76. However, in the above cases, we stated that our limited review standard for small purchases is intended to apply only to protests against the contracting agency's approach to defining the field of competition for small purchases. Thus, once the field of competition is defined, the procurement must be conducted consistent with the concern for fair and equitable competition that is inherent in any procurement. CMI Corporation, *supra*. Therefore, since the protest challenges the propriety of the Army's determination to award without giving all offerors the opportunity to submit quotations on Hubbell fixtures only, not the Army's approach to defining the field of competition, we find the limited review standard of the cases cited by the Army to be inapposite here.

Accordingly, we sustain the protest.

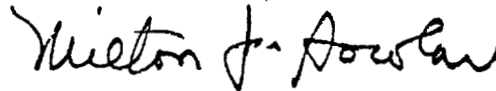
Since cancellation of the RFQ and resolicitation is not possible because Revere has completed delivery of the light fixtures, Le Prix claims its quotation preparation costs. The award of quotation preparation costs is only justified where the protester shows that the government's conduct towards the protester was arbitrary and capricious, as opposed to merely negligent, and that, if the government had acted properly, the protester would have had a substantial

chance of receiving the award. Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD 604.

The record indicates that of the 10 offerors submitting quotations on fixtures equal to Hubbell fixtures, Le Prix submitted the second lowest quotation. Le Prix presents no further evidence that it would have had a substantial chance of receiving the award if it had had the opportunity to quote on Hubbell fixtures only. Therefore, since it cannot now be determined whether Le Prix had a substantial chance of receiving the award if it had the opportunity to quote on Hubbell fixtures only, Le Prix is not entitled to quotation preparation costs. See Timberland-McCullough, Inc., B-202662; B-203656, March 10, 1982, 82-1 CPD 222. Accordingly, we need not consider whether the Army's conduct towards Le Prix was arbitrary or capricious. See Tracor Marine, Inc., supra.

We sustain the protest, but we deny the claim.

Although we are not recommending any remedial action on the instant procurement, we are bringing this matter to the attention of the Secretary of the Army to preclude a recurrence of the procurement impropriety in the future.



Acting Comptroller General
of the United States