

Allegiance

DECISION



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

FILE: B-220949 **DATE:** February 25, 1986
MATTER OF: Discount Machinery and Equipment, Inc.

DIGEST:

1. Agency may not solicit quotations on one basis and then award a contract on another basis.
2. Recovery of quotation preparation costs may be allowed where the contracting agency unreasonably excluded the protester from the procurement, and other remedies are not appropriate. Recovery of costs of filing and pursuing the protest may also be allowed where the agency unreasonably excluded the protester from the procurement and GAO does not recommend that the protester be awarded the contract.

Discount Machinery and Equipment, Inc. (Discount), protests the award of a contract to National Machinery and Supply Co. (National) by the Forest Service, U. S. Department of Agriculture, Missoula, Montana, under small purchase request for quotations (RFQ) No. 5-66, for a 17-inch geared head lathe and accessories.

The RFQ contained four pages of technical specifications setting out required minimum and maximum dimensions. Discount contends that the Forest Service improperly waived some of the technical specifications in order to accept National's lower priced quote of an Enterprise lathe, Model No. 1810. Discount states that it is a distributor of Enterprise products and that it did not quote the model offered by Discount because this type of lathe did not conform to Agriculture's specifications.

We sustain the protest.

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The Forest Service received 19 quotations for the lathe. Discount submitted the lowest acceptable quotation of \$23,995 for a Clausing/Colchester lathe,^{1/} while National submitted the second lowest quotation of \$17,750 for an Enterprise lathe. The record shows that the agency rejected one quote priced lower than National's and Discount's quotes because the lathe offered was considered "too big." Agriculture admits that the Enterprise lathe did not meet three of the specifications, specifically:

". . . [it] was 1/4 of an inch larger in the 'width of the bridge' . . ., three inches longer in the overall length and three inches taller in the overall height."

The Forest Service considers the deviations minor because they do not affect the operation of the machine. For this reason and because of the \$6,245 saving over the price of the Clausing lathe, the Forest Service found that it was in the best interest of the government to award the contract to National. Award was made on September 26, 1985. Following an initial, October 3, protest to the Forest Service, Discount filed its protest with our Office on October 29. We understand that National has shipped the Enterprise lathe to the Forest Service.

The agency asserts that our Office has recognized that the contracting officer has broad discretion under the small purchase procedures to determine which offer meets the government's needs, citing R. E. White & Associates, Inc., 61 Comp. Gen. 320 (1982), 82-1 C.P.D. ¶ 294, and Elsco International, B-215664, Dec. 17, 1984, 84-2 C.P.D. ¶ 672. The Forest Service argues that what the contracting officer did was exercise his discretion in this case by waiving the alleged minor deviations in National's quotation and awarding at the low price.

^{1/} Discount submitted a quote for another lathe at \$20,750, which was rejected because the model deviated from the RFO specification for a certain type of roller bearing and two specified dimensions.

The cases cited by the agency concern protests of the contracting agency's approach to defining the field of competition for small purchases such as a protest of the agency's stated needs as reflected by the specifications. We have limited our review of the agency's determination of its needs. Le Prix Electrical Distributors, Ltd., B-212078, Nov. 15, 1983, 83-2 C.P.D. ¶ 562. However, once the field of competition is established, as here, the procurement must be conducted consistent with the concern for fair and equitable competition that is inherent in any competition. CMI Corp., B-211426, Oct. 12, 1983, 83-2 C.P.D. ¶ 453.

Therefore, since the protest concerns the award of a contract on a basis other than that provided for under the RFO after the field of competition has been established, we find the limited review standard contained in the cases cited by the agency to be inapposite here.

In this connection, it is fundamental that an agency may not solicit quotations on one basis and then make award on another basis. Moreover, where an agency's needs change and create a material discrepancy between the RFQ's specification and its actual needs, the RFQ should be revised to provide bidders with the most accurate information available. Introl Corp., 64 Comp. Gen. 672 (1985), 85-2 C.P.D. ¶ 35.

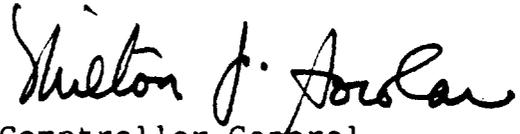
Here the RFQ overstated the agency's needs in certain respects. In our view, the agency should have amended the RFQ to reflect the relaxed requirements, and solicited new quotations once it was apparent that the RFQ did not represent its minimum needs.

Although the contract was improperly awarded to National, it is impracticable for our Office to recommend corrective action now that the equipment has been shipped. However, where a protester has been unreasonably excluded from a procurement and where the other remedies enumerated in our regulations are not appropriate, the recovery of bid or proposal preparation costs are allowable. See 4 C.F.R. § 21.6(d), (e) (1985).

Notwithstanding Discount's low responsive quotation, the Forest Service rejected it in favor of a quote which did not meet the specifications. The Forest Service thereby unreasonably excluded Discount, who as the low responsive offeror clearly had a substantial chance of receiving the

award. We therefore find that since no other corrective action is appropriate, Discount may be allowed recovery of its quotation preparation costs. Introl Corp., 64 Comp. Gen. 672, supra. We further find that Discount should be allowed recovery of its costs of filing and pursuing the protest, as, under the circumstances, we have been unable to recommend an award to Discount. Discount should submit an accounting of its costs to the Forest Service, and Discount and the agency should attempt to reach an agreement on the amount of the costs. If they cannot reach agreement within a reasonable time, we will determine the amount. 4 C.F.R. § 21.6(f) (1985).

The protest is sustained; the protester is entitled to the costs of quotation preparation and of filing and pursuing the protest.

for 
 Comptroller General
 of the United States