

11/17/85



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery and Equipment, Inc.
 File: B-223462
 Date: September 11, 1986

DIGEST

1. Protest of agency's determination that protester's offer of a particular brand of lathe and accessories was unacceptable is dismissed where the protester is not an interested party under GAO Bid Protest Regulations since it would not be in line for award even if its protest were upheld. If GAO were to find that agency improperly rejected the protester's offer of particular brand of lathe, firm which offered identical lathe at lower price, not the protester, would be in line for award.

2. In conducting a procurement under small purchase procedures, the contracting officer has broad discretion to determine how to meet the government's needs and the manner of obtaining quotations. Award under small purchase procedures on the basis of specifications revised after initial evaluation of quotations is not objectionable where protester was not prejudiced since it was requested to, and did, provide quotation after being orally advised of changes in the government's requirements.

DECISION

Discount Machinery and Equipment, Inc. (DME), protests the rejection of its offer and the issuance of a purchase order to Tool Supply of Montana for a 17-inch geared head lathe and accessories under small purchase request for quotations (RFQ) No. 6-718 issued by the Forest Service, Department of Agriculture, Missoula, Montana. The protester alleges, in essence, that the agency violated Federal procurement regulations by amending the solicitation requirements without giving written notice thereof and by requesting additional quotations after the closing date that was established in the RFQ.

DME's protest is dismissed in part and denied in part.

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The RFQ listed the technical specifications for the lathe and accessories. The agency states that it used Clausing/Colchester equipment as a model^{1/} in preparing the specifications because it most closely represented the quality of equipment required. The specifications included a requirement for a 17x60-inch bed capacity and Gamet precision spindle bearings. The RFQ also stated that oral or written quotations would be accepted.

In response to the RFQ, the agency received quotes from six firms offering a total of seven different brands of equipment. DME quoted prices for the American Machine and Tool Turnmaster 18x60-inch bed model lathe, and for the Clausing/Colchester 17x60-inch bed model. Of the two quotes received for the Turnmaster lathe, the protester's quote was higher by \$3,500; of the three quotes received for the Clausing/Colchester 17x60-inch bed model, the protester's quote was the lowest.

The agency states that during the evaluation of offers, it considered all equipment for which it received quotes and determined that only the Clausing/Colchester lathe and accessories would meet its needs. The agency further states that one of the offerors of Clausing/Colchester equipment quoted a 17x80-inch bed model for about the same price as the 17x60-inch bed model. Because the longer bed would be more advantageous in that it would provide a longer work area for more versatile machine application, the agency requested quotations for a 17x80-inch bed Clausing/Colchester model during negotiations with DME and the third offeror of Clausing/Colchester equipment. For that model, DME's quotation was the next low offer. Thus, the protester's only low offer was for the Clausing/Colchester 17x60-inch bed model which met the lathe bed capacity initially specified in the RFQ.

DME contends that the Turnmaster meets all the RFQ specifications with the exception that it has Timken bearings rather than the specified Gamet bearings. DME maintains that the Timken bearings are of the same quality as the Gamet bearings and further argues that the Turnmaster "has been accepted as equal to the Clausing/Colchester by the Government city, state and Federal."

^{1/} The RFQ was not, however, restricted to a particular brand name or model.

With respect to DME's protest of the rejection of its offer of the Turnmaster, we find that the protester is not an interested party for the purpose of this protest basis. Our Bid Protest Regulations require that a protester be "an interested party" before we will consider its protest. 4 C.F.R. § 21.1(a)(1986). A protester is not an interested party where it would not be in line for award if its protest were upheld. C.A. Parshall, Inc., B-220650; B-220555.2, Jan. 14, 1986, 86-1 C.P.D. ¶ 38 at 4. In this case, even if it were determined that the Timken bearings or that the Turnmaster is in all respects equal to the Clausing/Colchester so that the purchase order should be issued for the Turnmaster lathe, DME would not be in line to receive the order because another firm submitted a lower quotation on the same equipment. Since the protester is not an interested party with respect to the question of the acceptability of the Turnmaster, its protest on this issue is dismissed.

DME further contends, in essence, that the procurement was conducted improperly in that "after bid opening" the agency amended the solicitation without giving written notice and took oral quotations (by telephone) for the Clausing/Colchester 17x80-inch model lathe.

In response to this allegation, the agency states that the protester has confused the prescribed procedures for a small purchase RFQ with those applicable to the sealed bid procurement process, "wherein changes are not allowed after bids." The agency further states that the procurement was handled in accordance with Federal Acquisition Regulations (FAR), 48 C.F.R., Part 13, which sets forth the procurement procedures for small purchases.

We agree with the agency that the non-negotiated pricing procedures which govern the conduct of sealed bid/advertised procurements are not applicable to a small purchase RFQ. Under the Federal Acquisition Regulation, 48 C.F.R., part 13 (1985), small purchases--defined, as applicable to this case, as the acquisition of supplies in an amount of \$25,000 or less--may be conducted on an informal basis to reduce administrative costs. The term "small purchase procedures" specifically excludes contracts awarded through sealed bidding. FAR, 48 C.F.R. § 13.101(c).

Further, the Federal Acquisition Regulation, 48 C.F.R. § 13.106(b)(2), provides for the oral solicitation of quotations for small purchases, except in circumstances not present in this case. In negotiating a small purchase, the contracting officer has broad discretion to determine how to

meet the government's needs and the manner of obtaining quotations. PSI-TRAN Corp., B-195014, Oct. 26, 1979, 79-2 C.P.D. ¶ 296. Thus, while the agency initially accepted written quotations under the solicitation, such was not required; as previously stated, the solicitation provided for the submission of oral or written quotations.

Concerning DME's objections to the agency's requesting, after the initial closing date, that DME provide quotations for equipment with features not specified in the solicitation, we have held that when a contracting agency informs an offeror of its changed requirements during negotiations, the offeror is on notice of those changes, notwithstanding their inconsistency with the requirements as set forth in the solicitation. See Ram Enterprises, Inc., B-221924, June 24, 1986, 86-1 C.P.D. ¶ 581. Even though the solicitation as issued did not specify a particular brand of equipment and did not require a lathe having a bed size of 17x80 inches, the agency apprised DME of its determination that, of the quotations it received, the Clausing/Colchester model with the 17x80-inch bed size would best meet its needs. Since DME was allowed to, and did, quote its price for the 17x80-inch bed lathe, it was not prejudiced by the agency's action. See Quality Engines, Inc., B-203790, Dec. 3, 1981, 81-2 C.P.D. ¶ 441. Under these circumstances, we find DME's protest on this basis without merit.

The protest is dismissed in part and denied in part.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel