



The Comptroller General  
of the United States

Washington, D.C. 20548

McAuliffe

## Decision

**Matter of:** AMBAC International

**File:** B-234281

**Date:** May 23, 1989

---

### DIGEST

Where protester was advised 1 month before the closing date for receipt of best and final quotations that agency would consider the quotations as firm offers, protest, filed after award, that the agency should have employed request for proposals instead of request for quotations to solicit firm offers is untimely.

---

### DECISION

AMBAC International protests the award of a contract under solicitation No. EH-8A1660-EH-EH, issued by the Army for 37,500 fuel injector nozzles for Army trucks. AMBAC protests the Army's use of a request for quotations (RFQ) instead of a request for proposals (RFP), the agency's determination of urgency, and the agency's alleged failure to hold meaningful discussions.

We dismiss the protest in part and deny it in part.

The agency reports that this requirement was originally awarded on December 30, 1987, but as the result of an earlier protest by AMBAC, the contract was terminated, and the procurement resolicited. The procurement was further delayed by a subsequent protest filed by a different contractor. The agency reports that in June 1988, in order to satisfy an apparent urgent need for the fuel injector nozzles, the Army prepared and duly executed a justification for other than full and open competition and a justification for the use of an oral solicitation. In accordance with Federal Acquisition Regulation (FAR) § 15.402(f) (FAC 84-37), the Army initiated an oral solicitation on July 7, 1988, using a request for quotations, Standard Form (SF) 18, to document the required item description, quantity, and

045516/138712

delivery schedule.<sup>1/</sup> Price was the only term solicited from each participating contractor.

Four firms were invited to compete and three of the firms, including AMBAC, submitted price quotations by the July 22 closing date. The firm that submitted the apparent low quotation was found nonresponsible by the Army and was later denied a certificate of competency by the Small Business Administration. AMBAC initially quoted a unit price of \$11.50 per nozzle, while Lucas CAV Industries submitted a quote of \$9.94 per unit. Preaward surveys were conducted for the remaining two firms, AMBAC and Lucas. In the meantime, AMBAC was awarded an interim contract at a unit price of \$20 per nozzle while the Army conducted the surveys.

On December 9, AMBAC notified the Army that it had increased its quoted price from \$11.50 to \$15.50 per nozzle unit, due to a change in foreign exchange rates. The Army then sought final quotations from AMBAC and Lucas, and instructed the contractors that "[o]nly written proposals will be accepted and these prices will be valid for thirty days from receipt." AMBAC reaffirmed its unit price of \$15.50, and extended its terms until January 16, 1989. An award was made to Lucas on January 13, at a unit price of \$9.94, and a total price of \$372,750. AMBAC filed this protest with our Office on January 27, challenging the Army's award to Lucas.

AMBAC first challenges the Army's use of an RFQ (SF 18) instead of an RFP to solicit firm offers. We dismiss this protest ground as untimely.

AMBAC was informed on December 15, 1988, nearly a month before the closing date for best and final quotations, that the Army was considering the price quotes solicited by means of the RFQ as firm offers. AMBAC nevertheless confirmed its unit price of \$15.50 and extended its price in response to the agency's request. The record further shows that AMBAC knowingly participated in this procurement under the stated terms, and did not protest the procurement methodology employed by the Army until after award. Since the protester did not file its protest prior to the closing date for receipt of best and final quotations or within 10 days after learning the basis for its protest, this protest

---

<sup>1/</sup> FAR § 15.402(f) provides that an oral solicitation may be used when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the government.

ground is untimely and will not be considered on the merits. Bid Protest Regulations, 4 C.F.R. 21.2(a) (1988).<sup>2/</sup>

We note, in any event, that the protester has not shown that it has been prejudiced by the agency's use of an RFQ here instead of an RFP since there is no indication in the record that AMBAC's price would have been any lower if this solicitation had been issued as an RFP. —

Next, AMBAC questions whether the agency's requirements were in fact urgent. AMBAC notes, for example, that the RFQ was issued in July 1988, and that the award was made in January 1989, 6 months later. However, despite the delays, the record clearly shows that the item in question is in critical stock position and that failure to expeditiously acquire the item would render inoperable a significant part of the Army's truck fleet in the United States, Korea, and Europe. The protester does not allege otherwise. We therefore have no basis to question the agency's determination that there existed a bona fide urgency to acquire the item.

AMBAC's final contention is that the Army violated its obligation to hold meaningful discussions by failing to notify AMBAC that its quoted price was higher than the quotes of other offerors. The protester bases this protest ground upon a statement made after award by the contracting activity's buyer that, in his opinion, compared to the other prices quoted, AMBAC's price of \$15.50 "would be found to be unreasonable."

The Army reports, however, that its buyer was stating only his own view of the protester's price and that the Army did not consider AMBAC's price to be unreasonable. In fact, the contracting officer found AMBAC's price reasonable based upon the recent procurement history of this product which reflected awards at substantially similar prices (e.g., 1,086 nozzle items were awarded at a unit price of \$13.83 in 1985, and 32,482 nozzles were awarded at a unit price of

---

<sup>2/</sup> AMBAC also protests the alleged lack of stated evaluation criteria in the RFQ. This contention is also untimely since protests alleging apparent solicitation improprieties must be filed prior to the closing. 4 C.F.R. § 21.2(a)(1). We also note that there is no requirement that a solicitation contain evaluation factors other than price. See FAR § 15.605(b) (FAC 84-28). Since price here was the only term requested by the solicitation, price was obviously the sole evaluation criterion.

\$16.82 in 1984.) Thus, AMBAC is incorrect in its contention that the agency determined AMBAC's price unreasonable.

In any event, we do not think that the Army failed to hold meaningful discussions. As indicated above, AMBAC, in July 1988, initially quoted a price of \$11.50 per unit which was competitive with the other offerors' quotes. Six months later, AMBAC, by letter dated December 9, unilaterally increased its quote to \$15.50 per unit and advised the agency that the increase was due to unfavorable foreign exchange rates beyond AMBAC's control. The Army requested best and final quotations shortly after receipt of this letter. Given AMBAC's stated reason for increasing its price, we do not think additional discussions were warranted.

The protest is dismissed in part and denied in part.

  
James F. Hinchman  
General Counsel