

612-2200-10



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: East West Research, Inc.

File: B-239619

Date: August 28, 1990

Richard Snyder, for the protester.
Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest contending that award was improperly made to a large business because procurement was a small business-small purchase set-aside is denied where the request for quotations clearly stated that the procurement was unrestricted.
2. Protest that agency failed to inform protester that procurement was unrestricted is denied where notice of this fact was clear from the face of the request for quotations.
3. Contracting officer is not required to notify Small Business Administration (SBA) that small purchase procurement will not be set aside for small businesses because applicable Federal Acquisition Regulation provision does not require SBA notification, and such notification would be inconsistent with the general purpose and scheme of the small purchase procedures which are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens on agencies.
4. Agency evaluation finding protester's offered alternate item technically unacceptable was reasonable where the protester failed to submit sufficient information demonstrating that its alternate item was the technical equivalent of the approved models listed in the request for quotations.

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DECISION

East West Research, Inc. protests the issuance of a purchase order to Amerigas, Inc. under request for quotations (RFQ) No. DLA700-89-X-VX69, by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA), for two fluid pressure regulating valves. East West contends that the purchase order was improperly issued to a large business concern or, if the procurement in fact was unrestricted, that the agency failed to give East West notice of this fact. Additionally, East West alleges that the agency's evaluation of its offered alternate item was unreasonable.

We deny the protest.

The RFQ, issued on September 22, 1989, required quotations to be submitted by October 18. Initially, the agency intended to treat the RFQ as a small business-small purchase set-aside; however, because the contracting officer determined that the price of the valves would not exceed \$1,000 and because quotations from one or more small business concerns were not expected, the contracting officer issued the RFQ on an unrestricted basis. See Federal Acquisition Regulation (FAR) §§ 13.105(d)(2) and 13.106(a). Because DCSC's regulations only required pre-solicitation dissolutions in excess of \$10,000 to be referred to the Small Business Administration (SBA) procurement center representative for review, the contracting officer did not notify the SBA about the RFQ's unrestricted status.

Litton Systems, Inc. is the original equipment manufacturer (OEM) of the fluid pressure regulating valve. In the RFQ's item description, three preapproved valves for the procurement were listed:

<u>Manufacturer</u>	<u>Valve Part Number (P/N)</u>
Litton Systems Inc.	P/N 179999-148
Litton Systems Inc.	P/N 900999-8797
Amerigas Inc.	P/N 0781-3998

While offerors were invited to submit quotations for one of these approved manufacturer parts, the RFQ also stated that alternate products would be considered. On October 20, East West submitted a price quote for an alternate item manufactured by Controls Corporation of America (CONCOA), P/N 0212-2311-01, at a unit price of \$203. Since no clause in the solicitation prohibited the acceptance of late quotes, and because East West was the sole offeror, DCSC

referred East West's offer to the Technical Services Division (TSD) for technical evaluation.

A comparison of the alternate item data sheets with the OEM data sheets indicated that the CONCOA valve did not have the panel mounting characteristic required under the RFQ. On February 23, 1990, TSD contacted CONCOA; the manufacturer advised DCSC that the CONCOA valve did not have the panel mounting characteristic. Accordingly, on that same date, TSD determined East West's alternate item to be technically unacceptable.

Since East West's alternate item was technically unacceptable, and because no other quotes had been submitted, DCSC requested a quote from Amerigas, one of the RFQ's approved valve manufacturers. On February 28, Amerigas quoted a unit price of \$167.77 for its own approved valve, P/N 0781-3998. On March 8, DCSC issued a purchase order to Amerigas in the amount of \$335.54.

On March 30, East West protested to the agency that because the procurement was a small business-small purchase set-aside, award had been improperly made to Amerigas, a large business. On May 7, the agency denied East West's protest, stating that the procurement was unrestricted. East West subsequently filed its protest with our Office on May 15.

After reviewing the record and the RFQ, we find no basis for East West's conclusion that this procurement was a small business-small purchase set-aside. First, the restricted status was dissolved before the RFQ was issued. Second, the RFQ makes clear that the procurement was unrestricted; the first page of the RFQ clearly indicates by check mark that the notice of the small business-small purchase set-aside "is not applicable." Additionally, on page 2 of the RFQ the "notice of a small business-small purchase set-aside" (Block 10) is not checked.

Since the RFQ was clearly not a small business-small purchase set-aside, award to a large business concern was proper. Moreover, given the clear notice on the face of the RFQ, we also find East West's allegation that DLA failed to inform it about the unrestricted nature of the procurement without merit.

Generally, every acquisition which is subject to small purchase procedures is automatically reserved for small business concerns. See FAR § 13.105(a). However, where the contracting officer determines that the proposed purchase price does not exceed the \$1,000 threshold set out in FAR § 13.106(a), and the contracting officer determines there is

no reasonable expectation of obtaining quotations from at least one responsible small business concern, the contracting officer "need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis." See FAR § 13.105(d)(2).

FAR § 13.105(d)(2) provides that:

"If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in [FAR §] 19.505."

In its comments on the agency report, East West maintains that this language imposes a requirement upon the contracting officer to notify the SBA procurement center representative each time the § 13.105(d)(2) exemption is utilized. Since the contracting officer did not notify the SBA about the RFQ's unrestricted status, East West argues that the contracting officer acted improperly.

We see no basis to conclude that the contracting officer was required to notify the SBA of the RFQ's unrestricted status. On its face, FAR § 13.105(d)(2) does not specifically require any notification by the contracting officer. A mere reference to the Small Business Administration (SBA) in the FAR provision is not enough to impose a requirement for specific action--i.e., notifying SBA--on the contracting agency. See Universal Canvas, Inc., B-226996, June 5, 1987, 87-1 CPD ¶ 576.

Nor do the general purpose and scheme of the small business set-aside regulations suggest that FAR § 13.105(d)(2) imposes a notice requirement. FAR § 13.105(d)(2) applies to small business-small purchase set-asides; for purchases of less than \$25,000, these simplified procedures for acquiring goods and services are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens on agencies and contractors. OMNI Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248. Given the volume of procurements under \$25,000, a notice requirement of the type East West suggests would impose an undue burden upon both the contracting activity and SBA.

With regard to the technical evaluation of its part, East West contends that although DCSC was told by a CONCOA representative that the CONCOA valve did not possess a panel mounting characteristic, this information was incorrect. In

its comments on the agency report, East West asserts that because of a "special arrangement" with the manufacturer, unknown to the CONCOA representative at the time of the agency inquiry, East West is in fact able to supply the CONCOA valve with the panel mounting characteristic. Since DCSC could have discovered this "special arrangement" had it spoken with East West at the time of the technical evaluation, East West now argues that the agency's evaluation of its alternate item was unreasonable.

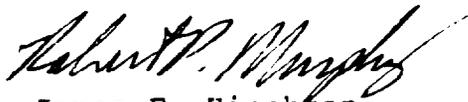
An offeror must submit sufficient information with its alternate item to enable the contracting agency to determine whether the item meets all the requirements of the solicitation. Blackmer Pump, B-231474, Sept. 9, 1988, 88-2 CPD ¶ 225. We will not disturb the agency's technical determination unless it is shown to be unreasonable. Peck Equipment Co., B-227135, July 13, 1987, 87-2 CPD ¶ 40.

Here, the RFQ stated that all offerors "must furnish the data required" to establish the technical acceptability of their quoted item. Despite this warning, East West failed to do so. On its face, the CONCOA valve did not exhibit the required panel mounting characteristic, nor did East West furnish any data establishing that its item had this feature. Information acquired by the agency from the manufacturer confirmed that the CONCOA valve lacked the panel mounting feature. Under these circumstances, the agency reasonably concluded that East West's offered part was not technically equal to the parts listed in the RFQ.

East West challenges the agency's reliance on the information obtained from the manufacturer, arguing that the agency should have raised any questions it had regarding the features of the part with East West. We disagree. The obligation to demonstrate the acceptability of an alternate product is on the offeror, Peck Equipment Co., B-227135, supra, and East West failed to submit any technical data on its offered part with the quotation. The agency was not required to give East West another opportunity to demonstrate the acceptability of its part, and in fact had no obligation to seek out information from CONCOA. Nevertheless, once the agency decided to further investigate the acceptability of the part East West offered, it reasonably relied on the information it received from the actual

manufacturer of the part, particularly in view of East West's failure to furnish any technical data with its quotation.

The protest is denied.

for 
James F. Hinchman
General Counsel