



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Isidor Stern Enterprises Corp.

File: B-243265

Date: July 17, 1991

Isidor Stern for the protester.
Robert L. Mercandante, Esq., Defense Logistics Agency, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly declined to consider a copy of a quote for award purposes, where protester alleged the agency lost its quote, but failed to prove that the quote actually arrived at designated office in the procuring agency.
2. Protest that awardee does not meet the small business requirement set forth in the request for quotations is dismissed, since the General Accounting Office lacks jurisdiction to review size protests.

DECISION

Isidor Stern Enterprises Corp. protests the award of a contract for interlocking slide fasteners to Talon, Inc., under request for quotations (RFQ) No. DLA500-91-T-2093, issued by the Defense Industrial Supply Center (DISC), Defense Logistics Agency.

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

The RFQ called for the submission of quotations by November 16, 1990. The only recorded quoter as of that date was Talon, which received the contract award on January 10, 1991. On February 11, 1991, Isidor Stern filed an agency-level protest against the award to Talon, alleging that Isidor Stern submitted the low quote under the solicitation and that the agency buyer acknowledged the submission of its quote. The protester supported this allegation with a copy of its quote, as well as certified mail receipts bearing the RFQ number and evidencing a November 16, 1990, delivery date to the agency. It argued from this evidence that the agency must

have received the quote before the submission deadline. On March 8, 1991, the agency denied the protest because its files contained no evidence of receipt of a quote from Isidor Stern. This protest followed.

Where it is alleged that a quote was lost, the protester must first establish that its quote actually arrived at the designated office in the procuring agency for receiving quotes. Isidor Stern has not provided satisfactory evidence on this point and the agency has not located the allegedly lost quote. Although the RFQ cautioned offerors that the absence of the Buyer/Branch Code on their responses might cause misdirection of their quotes,^{1/} Isidor Stern's certified mail receipts bear no reference to this code. As the protester admittedly did not observe the RFQ's admonition with regard to addressing its quote, it assumed the risk that the quote might be misrouted. See West Canyon Boiler, Inc., B-232571, Dec. 9, 1988, 88-2 CPD ¶ 578. Also, Isidor Stern has not produced the original return receipt to demonstrate delivery of its quote, but rather a duplicate receipt, unsigned by an agency representative, acquired from the Postal Service to pursue its protest.

The protester has not presented credible evidence to support its allegation that the agency buyer acknowledged timely receipt of its quote. Indeed, the agency buyer denies that any pre-award discussions with Isidor Stern took place; her contemporaneous records reflect only discussions with Talon. Isidor Stern only submitted a page of notes listing the name of the agency buyer, Talon's winning quotation price, and the statement, "I am close." We are not persuaded that this note indicates that the agency acknowledged timely receipt of the quote. Also, the dates on the note, January 13 and 28, follow the January 10 award to Talon, which would seem to rebut the allegation that the buyer was previously aware of Isidor Stern's quote.^{2/}

Even assuming the quote arrived at the cognizant DISC office, Isidor Stern has not alleged, as it must, that the loss of its quote resulted from anything more than mere negligence by the agency. See East West Research Inc., B-239565; B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, aff'd, Defense Logistics Agency--Recon., B-239565.2; B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298. Where an agency has lost a quote received before

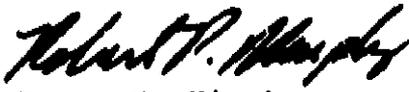
^{1/} DISC has a very high volume of small purchase acquisitions.

^{2/} Confronted with this discrepancy, Isidor Stern unconvincingly argued that the January dates represented the next month follow-up dates to alleged December discussions.

the submission deadline owing to mere negligence, an offeror is not permitted to submit a duplicate quote to show its price after the other prices have been exposed.^{3/} Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244. Displacing an otherwise successful offeror on the basis of a quotation provided after the revelation of prices is generally inconsistent with maintaining the integrity of the competitive system. East West Research Inc., B-239565; B-239566, *supra*; see also Rodeo Road Equip., Inc., B-242093, Mar. 7, 1991, 91-1 CPD ¶ 256.

Isidor Stern also argues that award to Talon was improper because Talon was not a small business, as required by the RFQ. We dismiss this portion of the protest because the Small Business Administration (SBA), not our Office, has conclusive authority to review small business size protests for federal procurements. 15 U.S.C. § 637(b)(6) (1988). In any case, under SBA regulations, a protester must lodge its size protest within 5 business days after the contracting officer provides notice of the awardee's identity in order for the protest to be applicable to that procurement. 13 C.F.R. §§ 121.1603(a)(2), (a)(3), (c)(1) (1991). Isidor Stern failed to file a size protest within 5 days of learning of the award to Talon, so its protest of this matter cannot affect this award. See Quality Inn - Marin, B-241520; B-241520.2, Dec. 19, 1990.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel

^{3/} Under appropriate circumstances, a duplicate offer may be submitted in lieu of a lost original before prices have been exposed. See, e.g., Physio Control Corp., B-234559; B-234559.2, June 26, 1989, 89-1 CPD ¶ 599.