

Comptroller General  
of the United States  
Washington, D.C. 20548

Calhoun  
146194

## Decision

**Matter of:** RMS Industries  
**File:** B-247074  
**Date:** March 18, 1992

Richard Snyder for the protester,  
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for  
the agency.  
Tania L. Calhoun and Andrew T. Pogany, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

Protest challenging the issuance of a purchase order to a firm other than the protester under a request for quotations issued using small purchase procedures is denied where the apparent agency loss of protester's quotation was an act of occasional negligence and not a breach of agency's duty to promote competition to the maximum extent practicable when using small purchase procedures.

### DECISION

RMS Industries protests the issuance of a purchase order to Kampi Components Co., Inc. under request for quotations (RFQ) No. DLA400-91-T-P549 for 1,026 spools of tin alloy solder, issued by the Defense Logistics Agency, Defense General Supply Center (DGSC), Richmond, Virginia. RMS contends that it submitted a lower priced quotation than the awardee's and that the purchase order therefore should have been placed with it. The agency states that RMS's quotation was apparently lost and therefore not considered.

We deny the protest.

The RFQ was issued on August 21, 1991, under small purchase procedures; the scheduled closing date for receipt of quotations was September 7. The agency received quotations from three offerors; on September 30 it awarded a purchase order to Kampi, which had quoted the lowest unit price of \$3.27. On December 9, RMS learned that the award had been

made to Kampi.<sup>1</sup> Because RMS states it submitted a price quotation of \$2.91 per unit, it filed an agency-level protest on that same day. On December 20, the agency notified RMS that it could find no evidence of having received its quotation; RMS filed this protest with our Office that same day, apparently before receiving the agency's response. Because the protest was filed more than 10 days after contract award, the agency was not required to stay performance pending completion of the protest proceedings. 31 U.S.C. § 3553(d) (1988). Kampi completed contract performance on January 8, 1992.

According to RMS, on September 10 it transmitted via telefacsimile machine a quotation of \$2.91 per unit for the solder. As proof of this transmission, RMS furnished the agency with a copy of a status report from its telefacsimile machine that shows RMS sent a 1-page message to DGSC's telefacsimile machine at 11:01 p.m. Pacific time on September 10. RMS also furnished the agency with a copy of the quotation it says it sent.

The agency confirms that it received a 1-page transmission from RMS, which it logged in at 2:05 a.m. Eastern time on September 11. The agency's records do not describe the contents of the transmission. While DGSC states that it cannot identify the document it received from RMS, and has no such document on file, the agency says that RMS's quotation was apparently lost.<sup>2</sup>

Assuming that DGSC did in fact lose RMS's quotation, there is no independent evidence, apart from the protester's own assertions, that the quotation it telefaxed on September 10 was in fact identical to the copy that it submitted to DGSC in its agency-level protest. Therefore, even if the contract were not completed, RMS's quotation could not be considered. Where a quotation is received by the agency and lost, the vendor may not resubmit its quotation since there is no certainty that a subsequently submitted copy would in

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<sup>1</sup>RMS learned on October 16 that an award had been made; on December 9, after following Freedom of Information Act procedures, RMS obtained a copy of the award document.

<sup>2</sup>There is some evidence indicating that the message transmitted by RMS was the quotation responding to the RFQ in question. The agency's records indicate that the intended recipient of the September 11 transmission from RMS was the buyer for this RFQ. This does not conclusively establish that the transmission from RMS was a quotation in response to the subject RFQ, but it strongly suggests that it in fact was. See East West Research Inc., B-239565; B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147.

fact be identical to the original received and lost. Displacing an otherwise successful offeror on the basis of a quotation provided well after the closing date is not consistent with maintaining the integrity of the competitive system. Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244.

We recognize that even with appropriate procedures in place, an agency occasionally will lose or misplace a bid or quotation, especially when the procuring activity is responsible for a high volume of small purchase buys. Rodeo Road Equip., Inc., B-242093, Mar. 7, 1991, 91-1 CPD ¶ 256. While this is unfortunate and, as discussed below, agencies must have procedures to minimize the possibility of loss, the occasional negligent loss of a quotation by an agency does not entitle the supplier to any relief. Id.

Small purchase procedures are subject to a requirement to promote competition "to the maximum extent practicable." Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(g)(4) (1988). In meeting this requirement, agencies must make reasonable efforts, consistent with efficiency and economy, to afford all eligible and interested vendors an opportunity to compete. Gateway Cable Co., 65 Comp. Gen. 854, 857 (1986), 86-2 CPD ¶ 333. Agencies have a fundamental obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations actually received and to give them fair consideration. East West Research Inc., supra, aff'd, Defense Logistics Agency--Recon., B-239565.2; B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298. RMS argues that the subject quotation is the third of its quotations that DGSC has lost within a 16-day period, suggesting that the agency's procedures for receiving quotations are inadequate.<sup>1</sup>

In East West Research, we found that an agency's loss of two quotations from the same party within less than 1 week, combined with a lack of any explanation of its procedures to safeguard against such loss, established that the agency did not have adequate procedures in place for safeguarding quotations. Id. Here, one other telefacsimile transmission from RMS, containing two quotations, may have been lost by

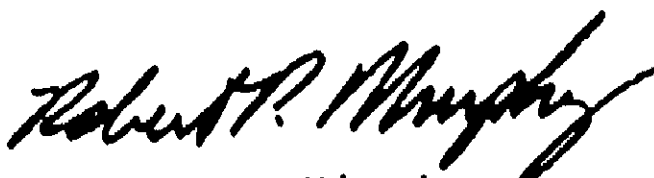
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<sup>1</sup>The agency reports that RMS previously stated to the agency that it submitted two quotations by telefacsimile as part of a group of seven messages to DGSC at 11:01 p.m. Pacific time on August 23, 1991. DGSC says it received three telefacsimile transmissions from RMS on that date and at that time, but it has no record of either quotation. RMS states that it did not protest these alleged losses because it was second-low on one and was allowed to submit a quotation for the other; hence, it was not prejudiced.

DGSC on August 23. Two weeks later, on September 11, the quotation at issue here was apparently lost by the agency. As in East West Research, the coincidence of these two quotation losses raises a question regarding the adequacy of the agency's procedures for receiving and safeguarding quotations sent by telefacsimile transmission. In this case, DGSC has explained in detail its procedures for providing adequate safeguards against losses of telefacsimile messages. The agency's communications center logs in telefacsimile messages to show when they are received and retrieved. Documents addressed to Contracting and Production are retrieved by a mailroom employee and sorted according to division. The documents are then delivered personally to the respective division secretary, who separates them by division section and places them in the section's internal mailbox. The mailboxes are clearly marked and in a central location within the division. The documents are retrieved and distributed by a section clerk. Following receipt of this protest, DGSC implemented the additional safeguard of providing divisional telefacsimile telephone numbers to vendors, described in a separate letter to RMS, thereby eliminating several steps in the distribution.

In light of the high volume of documents (several hundred) handled each day, DGSC's procedures to receive and reasonably safeguard quotations are a reasonable effort, consistent with efficiency and economy, to afford eligible and interested vendors an opportunity to compete. As a result of this protest, DGSC reviewed each step in the process to insure that safeguards are in place, and initiated an additional procedure to simplify the distribution process. Under the circumstances, we believe the agency's loss of RMS's transmission resulted from mere occasional negligence, which, though unfortunate, does not entitle RMS to any relief. Interstate Diesel Serv., Inc., B-244842.2, Sept. 27, 1991, 91-2 CPD ¶ 304.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel