



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ann Riley & Associates, Inc.

File: B-255289

Date: February 10, 1994

Joseph Gallo, Esq., Gallo and Ross, for the protester.
Ronald S. Perlman, Esq., Porter, Wright, Morris & Arthur,
for Neal R. Gross & Company, Inc., an interested party.
Clyde J. Hart, Jr., Esq., Interstate Commerce Commission,
for the agency.

David Ashen, Esq., Office of the General Counsel, GAO,
participated in preparation of the decision.

DIGEST

Protest challenging contract award for court and conference reporting services is dismissed where basis for award was consistent with basis for award in request for quotations; having solicited quotations on basis of low price to public for transcripts, agency could not then make award on materially different basis of protester's "bonus bid" (offering a per page bonus to the government for every page reported).

DECISION

Ann Riley & Associates, Inc. protests the Interstate Commerce Commission's (ICC) award of a contract to Neal R. Gross & Company, Inc. under request for quotations (RFQ) No. ICC-93-Q-0007, a small business set-aside for court and conference reporting services. Ann Riley argues that the ICC improperly failed to consider its "bonus bid" offering a per page payment to the government for every page reported.

We dismiss the protest.

The RFQ's Schedule of Supplies/Services requested quotations for court and conference reporting services. As set forth below, the RFQ required offerors to specify their maximum price for furnishing transcripts of ICC proceedings to the public:

"The Contractor Agrees To Charge Not More Than The Following Rates For Transcript Sales To The Public:

7 Day Delivery __Per Page/__Minimum Purchase
 3 Day Delivery __Per Page/__Minimum Purchase
 1 Day Delivery __Per Page/__Minimum Purchase
 Same Day Delivery __Per Page/__Minimum Purchase."

In addition, the RFQ included an attachment setting forth the ICC's estimate of the number of transcript pages required for various types of proceedings (regular hearing/oral argument, regular hearing, open commission conference, and closed commission conference), for various delivery periods (same day, 1-day, 2-day, 3-day, 5-day, and 7-day service) and for copies to the ICC. The RFQ, however, did not provide spaces for the entry of prices to the government.

The ICC received quotations from three firms (one of which was a large business concern ineligible for award under the small-business set-aside). Based upon its evaluation of the quotations set forth below, the agency determined that Gross had quoted the low price to the public.

	<u>Gross</u>	<u>Ann Riley</u>
7 Day (minimum)	\$4 (\$50)	\$ 4 (\$ 0)
3 Day (minimum)	\$6 (\$50)	\$ 6.75 (\$ 0)
1 Day (minimum)	\$9 (\$75)	\$ 9.75 (\$ 0)
Same Day (minimum)	\$10 (\$75)	\$11.50 (\$0)

Based upon Gross' low evaluated price to the public, the ICC awarded a contract to Gross.

'As noted above, Gross' price to the public for transcripts is lower than Ann Riley's by \$0.75 to \$1.50 per page for three of four delivery periods and the same for the fourth delivery period. Although Gross quoted a minimum price per order while Ann Riley did not, the ICC determined that Gross' minimum would have an insignificant impact on price to the public; given the length of ICC proceedings, Gross' total price for orders at its per page rate is expected normally to exceed Gross' minimum charge (but total less than Ann Riley's charge).

Ann Riley argues that the ICC's evaluation improperly failed to take into account Ann Riley's offer to pay the agency \$0.15 for each original page; Gross did not offer a similar "bonus" payment to the government. According to the protester, the agency was required to undertake a two-part evaluation: (1) determine the reasonableness of the quoted prices to the public; and (2) then select from among the quotations offering reasonable prices to the public the quotation offering the lowest price to the government. We disagree.

Since price to the public for transcripts here was the only pricing referenced in the RFQ, price to the public was obviously the sole evaluation criterion. See AMBAC Int'l, B-234281, May 23, 1989, 89-1 CPD ¶ 492. Having solicited quotations on the basis of price to the public, ICC could not then make award on the materially different basis of price to the government when other vendors would be prejudiced. See Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142. Since Gross, not Ann Riley, quoted the low price to the public, its selection under the stated evaluation criterion was proper.²

The protest is dismissed.



John M. Melody
Assistant General Counsel

²If Ann Riley believed that it was improper to consider only price to the public, as provided for under the RFQ, it was required to file this ground of protest prior to the closing time for receipt of proposals, since it concerned an apparent solicitation impropriety. 4 C.F.R. § 21.2(a) (1993).