



Washington, D.C. 20548

Decision

Matter of: ATF Construction Company, Inc.

File: B-260829

Date: July 18, 1995

Leonard W. Childs, Jr., Esq., Childs & Lewis, for the protester.
Thomas J. Duffy, Esq., and Bernard A. Pfeiffer, Esq., Department of the Army, for the agency.
Behn Miller, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where request for quotations issued under small purchase procedures did not contain a late quotations provision and where the only quote received significantly exceeded the government estimate, agency's decision to solicit additional quotes is not legally objectionable.

DECISION

ATF Construction Company, Inc. protests the award of a purchase order to Skyline Electric, Inc. under request for quotations (RFQ) No. DABT10-95-Q-0118, issued by the Department of the Army for repair of the Victory Pond logwalk at Fort Benning, Georgia. ATF contends that the agency improperly rejected its quotation as unreasonably priced, and improperly accepted a late quotation from Skyline.

We deny the protest.

The Victory Pond logwalk is part of the Army's Ranger training course at Fort Benning, and had become unsafe due to rotting wood and general deterioration. On March 1, 1995--after internal attempts to repair the logwalk had failed--the Army decided to contract for the required repairs. Because the agency estimated that the logwalk could be built for \$5,500 or less, the agency decided to conduct the requirement as a small business, small purchase procurement.

064274/154860

On March 6, the Army issued a small purchase RFQ to five companies, including the protester.¹ By the March 10 closing date, ATF submitted a price quote of \$9,867 and two other contractors responded with "no bid" quotes. Because ATF's price exceeded the \$5,500 government estimate by 79 percent, the Army decided to extend the closing date for receipt of quotes.

On March 13, the Army received a \$5,197 quote from Skyline, as well as another "no bid" quote from another contractor. Shortly thereafter, Skyline revised its price quote to \$4,975, and on March 16, the Army awarded a purchase order to Skyline for this amount. On March 17, ATF filed this protest with our Office.

ATF contends that the Army improperly accepted a late quote from Skyline, that Skyline's quote was nonresponsive, and that the government estimate here was unrealistically low since it did not include the cost of a construction platform or safety net--required by applicable Occupational Safety & Health Administration (OSHA) safety regulations incorporated as a technical requirement of the RFQ.

As stated above, small purchase procurements--acquisitions whose aggregate amounts do not exceed \$25,000--are exempted from the requirement for "full and open" competition in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (1994), and rely upon simplified procedures to promote economy and efficiency. See FAR § 13.106. Under the small purchase procedures, agencies generally may seek and consider revisions to a quotation any time prior to award. See DataVault Corp., B-248664, Sept. 10, 1992, 92-2 CPD ¶ 166. Where, as here, an RFQ does not contain a late quotations provision--but merely requests quotations by a certain date--that date is not considered to be a firm closing deadline; consequently, so long as the award process has not begun, an agency is not precluded from considering a quotation received after that date. See A & B Trash Serv., B-250322, Jan. 22, 1993, 93-1 CPD ¶ 53. Thus, the Army's decision in this case to extend the solicitation closing date and accept Skyline's subsequent quote is legally unobjectionable.

¹Because of safety concerns, and the fact that the Army needed to use this training course for the annual "Best Ranger Competition" in April 1995, the agency classified this procurement as an urgent and compelling requirement, see Federal Acquisition Regulation (FAR) § 6.303-2, which permits agencies to limit the number of sources from which it solicits bids or proposals. In addition, the FAR's small purchase procedures permit less than full and open competition. FAR § 13.106(a)(5).

ATF next contends that Skyline's quote was nonresponsive because Skyline did not offer to perform the repair effort in compliance with OSHA regulations. However, as submitted, Skyline did not qualify its quote or otherwise take exception to the OSHA requirements; consequently, on its face, Skyline's quote offered to perform the work as required by the RFQ and the agency had no basis to question Skyline's quote.

ATF claims that the Army estimate of \$5,500 was unreasonably low, probably did not include the cost of performing the required repairs in accordance with applicable OSHA safety regulations, and should not have been used to reject ATF's quote. In our view, the fact that Skyline offered a price below the Army's estimate renders academic ATF's challenge to the estimate.² As stated above, Skyline did not qualify its quote or otherwise take exception to the RFQ's requirements. Thus, the fact that both Skyline's initial and revised quotes are below the estimate belies ATF's claim that the estimate was unreasonably low.

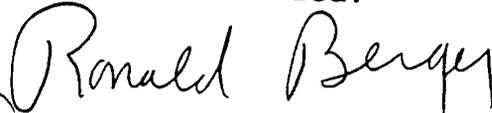
In addition, other than its general objection to the agency's reliance on the government estimate in rejecting its quote as overpriced, ATF raises no specific challenge to the accuracy of the government estimate. For example, ATF does not allege what portion of its quote that exceeded the estimate represented the cost of performing the repairs in accordance with OSHA's safety regulations. Under these circumstances, we see no basis to object to the agency's reliance on the estimate. See Range Technical Servs., 68 Comp. Gen. 81 (1988), 88-2 CPD ¶ 474; Intelcom Support Servs., Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135.

Finally, we note that ATF claims that in performing the contract Skyline did not comply with applicable OSHA regulations. While we understand ATF's concern, whether Skyline ultimately performed as promised in its quote, or whether the agency waived a requirement of the RFQ during

²Although ATF contended that its price quote was disclosed to Skyline, by affidavit the contracting officer has denied this contention; further, there is no evidence in the record to support this contention.

performance, is a matter of contract administration not for review by this Office. See 4 C.F.R. § 21.3(m)(1) (1995); Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14.

The protest is denied.


for Robert P. Murphy
General Counsel