



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cromartie Construction Company

File: B-271788

Date: July 30, 1996

Charles Cromartie for the protester.

Cynthia S. Guill, Esq., and Garret L. Rissing, Esq., Department of the Navy, for the agency.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where RFQ sought fixed-price quotations and identified only price as an evaluation factor, procuring agency improperly rejected responsive, low quotation in favor of a higher quotation.
2. In procurement set aside for small emerging businesses, record does not reasonably support agency's determination to issue purchase order to a large business at a substantial price premium on the basis of purported urgent need for contract performance.
3. Agency's concern that small business' quotation was unreasonably low involves the quoter's responsibility, the negative determination of which must be referred to the Small Business Administration.

DECISION

Cromartie Construction Company (CCC) protests the Department of the Navy's rejection of its low quotation under request for quotations (RFQ) No. N68925-96-Q-A303 to provide and install new locks and keys for a particular building at the Washington Navy Yard. CCC asserts that the Navy acted unreasonably in issuing a purchase order to another company at a price substantially higher than CCC's quotation.

We sustain the protest.

BACKGROUND

On March 22, 1996, the Navy Public Works Center issued the subject RFQ under the simplified acquisition procedures set forth in part 13 of the Federal Acquisition Regulation (FAR). The solicitation was set aside for "emerging small businesses" and sought fixed-price quotations to provide new locks and keys for Building No. 183 at the Washington Navy Yard in Washington, D.C.¹ The solicitation did not require the submission of technical proposals and did not identify any evaluation factors other than price.² The RFQ required "work to be completed within 14 calendar days."

After issuing the solicitation, the Navy's purchasing agent contacted various firms and posted the RFQ on the Navy Public Works Center bulletin board. CCC submitted a quotation of \$3,795 prior to the March 25 deadline; the government's estimate for this procurement was \$7,500. CCC's quotation stated that the company was located in Washington, D.C., but listed a Pennsylvania telephone number.³

On March 26, Cromartie telephoned the Navy Public Works Center to inquire about the procurement, asking to speak with the purchasing agent identified in the RFQ. The purchasing agent declined to speak with Cromartie and directed another Navy employee to advise Cromartie that the Navy was considering cancellation of the solicitation.⁴

¹"Emerging small business" means a small business concern whose size is no greater than 50 percent of the normal size standard applicable to the standard industrial classification code assigned to a contracting opportunity. FAR § 19.1002.

²Under the heading "Evaluation for Award" the solicitation stated: "Discounts offered may be taken, but will not be evaluated for award." No further evaluation criteria were identified.

³Charles Cromartie, the company's owner, explains that the Pennsylvania telephone number is the residence of his retired mother.

⁴There is some dispute regarding what Cromartie was told during this conversation. The Navy's purchasing agent submitted a declaration stating: "Cromartie was informed that the [Navy] was considering using in house forces and that [the purchasing agent] would contact [Cromartie] when a decision was reached." During a telephone conference conducted by our Office, the Navy employee with whom Cromartie spoke stated that she only advised Cromartie that the contract was

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The Navy asserts that, beginning on March 29, Navy personnel attempted to contact Cromartie by telephone, but were unable to get an answer at the number provided until April 4.⁵ On April 4, Cromartie's mother answered a call placed by the Navy and told the Navy representative that Cromartie would call back. On April 5, the Navy awarded a purchase order to Best Locking Systems of Maryland, a large business, in the amount of \$6,894.⁶ Cromartie returned the Navy's call on Monday, April 8. At that time, the agency advised him that, due to the agency's pressing need to have the new locks installed, a purchase order had been issued. This protest followed.

DISCUSSION

The Navy first argues that CCC has no basis to challenge the Navy's issuance of a purchase order because the procurement was conducted under simplified acquisition procedures, pursuant to an RFQ, under which CCC has no entitlement to award. See L C Jones Elec., B-249491, Nov. 23, 1992, 92-2 CPD ¶ 367. In this regard, the purchasing agent asserts that, because the Navy issued an RFQ rather than an invitation for bids (IFB), the Navy "had no obligation to utilize the quote [CCC] provided."

Where an agency proceeds with a small business set-aside using simplified acquisition procedures and receives a quotation from only one responsible small business concern at a reasonable price, FAR § 13.105(c)(3) requires that the contracting officer make an award to that concern. Further, we do not agree with the proposition that a responsible vendor submitting a low quotation in response to an RFQ is not entitled to any recourse in the event the agency issues a purchase order based on a higher quotation. Where, as here, an RFQ seeks fixed-price quotations and identifies only price as an evaluation factor, a procuring agency may not ignore a responsive, low quotation from a responsible vendor in favor of a higher quotation submitted by another firm. See Imaging Technology Corp., B-270124, Feb. 12, 1996, 96-1 CPD ¶ 68; The Mart Corp. B-254967.3, Mar. 28, 1994, 94-1 CPD ¶ 215; Garrett-Callahan Co., B-246895, Apr. 8, 1992, 92-1 CPD ¶ 352.

⁴(...continued)

scheduled to be canceled and did not provide any additional information. The parties agree that no information regarding CCC's quotation was requested during this conversation.

⁵Cromartie disputes the agency's assertions regarding its efforts to contact him, maintaining that the telephone identified in the quotation is equipped with a continuously operating answering machine.

⁶Best's quotation specifically states that it is other than a small business.

The Navy next maintains that it reasonably rejected CCC's quotation due to its inability to contact Cromartie and in light of the agency's urgent need to obtain contract performance.⁷ During a telephone conference conducted by our Office, Navy representatives noted that the solicitation required that performance be completed in 14 days and asserted that because this was a "priority one" procurement, the Navy had been unable to delay issuance of a purchase order beyond April 5.

The FAR requirements for simplified acquisition procedures contemplate significant flexibility to permit agencies to make such acquisitions efficiently and economically, and without incurring unnecessary burdens. Consistent with this flexibility, we do not believe that a contracting activity is required to substantially delay the issuance of a purchase order in a situation where there is a bona fide immediate need to satisfy the solicited requirement. However, here the record contradicts the agency's representations that its urgent needs justified issuance of a purchase order to Best Locking Systems 1 day after being advised that Cromartie would return the Navy's call. Specifically, the quotation submitted by Best Locking Systems contained an express exception to the RFQ's requirements regarding the 14-day period for contract performance. In particular, Best's quotation stated that contract performance would not be completed for "4-6 weeks after receipt of an order."⁸ Consistent with Best's express exception to the RFQ's performance requirements, the Navy's April 5 purchase order provided for a delivery date of May 28—some 7 weeks after the order was issued. On this record, we are unpersuaded that the Navy reasonably awarded a purchase order to a large business, at a price nearly double CCC's quotation, just 1 day after the Navy had been advised that Cromartie would contact them regarding his company's quotation.

Finally, the Navy asserts that it properly rejected CCC's quotation on the basis that it was unreasonably low. Specifically, the contracting officer states:

"I made a determination to cancel the emerging small business [ESB] set-aside and proceed with an unrestricted procurement in accordance with FAR § 19.1006(c)(1) and (2) [which states] that if only one quote is received on an ESB set-aside that is not a reasonable price, the contracting officer may cancel the ESB set-aside."

⁷The agency explains that the building at issue in this procurement was recently renovated, during which keys were provided to various contractors. The installation of new locks and keys in this procurement is intended to ensure that the building is secure.

⁸CCC's quotation took no exception to the RFQ requirement that performance be completed within 14 days.

A determination that an offered price for a fixed-price contract is too low generally concerns the offeror's responsibility, that is, the offeror's ability and capacity to successfully perform the contract at its offered price. See Envirosol, Inc., B-254223, Dec. 2, 1993, 93-2 CPD ¶ 295; Monopole S.A., Inc., B-254137, Nov. 4, 1993, 93-2 CPD ¶ 268; Ball Tech. Prods. Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465. Where the solicitation for a negotiated procurement includes evaluation criteria which pertain to an offeror's understanding of the work required, an offeror's unrealistically low price may be evaluated as indicating a lack of technical understanding. However, here, the RFQ did not identify any technical evaluation criteria. Accordingly, the agency's concern regarding the reasonableness of CCC's price could only be considered as a matter of responsibility. See Envirosol, Inc., *supra*; Ball Tech. Prods. Group, *supra*. Since CCC is a small business, any agency concern regarding CCC's responsibility was required to be referred to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) procedures. 15 U.S.C. § 637(b)(7) (1994); FAR 19.602-1(a); PHE/Maser, Inc., 70 Comp. Gen. 689 (1991), 91-2 CPD ¶ 210.

The protest is sustained.

Performance has been stayed and we recommend that the purchase order issued to Best Locking Systems be canceled and a purchase order be issued to CCC unless the Navy has concerns regarding CCC's responsibility. If this is the case, the Navy should refer the matter to the SBA for a conclusive COC determination. CCC is also entitled to recover the costs of filing and pursuing its protest.

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