



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Commonwealth Industrial Specialties, Inc.

File: B-277833

Date: November 25, 1997

Richard Snyder for the protester.

Philip F. Eckert, Jr., Esq., and Stephen Stastny, Esq., Defense Logistics Agency, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Requirement that responses to simplified acquisition request for quotations be submitted electronically through the agency's electronic bulletin board (EBB) is reasonable and consistent with the statutory requirement that competition for procurements using simplified acquisition procedures be promoted to the maximum extent practicable, where the agency reasonably determined that electronic quotations would promote efficiency and economy and would not be overly burdensome to prospective vendors.

DECISION

Commonwealth Industrial Specialties, Inc. (CIS) protests the terms of request for quotations (RFQ) No. SPO400-97-T-L228, issued by the Defense Supply Center Richmond (DSCR), Defense Logistics Agency (DLA), for pressure gages.

We deny the protest.

The RFQ was issued under the agency's automated procurement procedures as a simplified acquisition pursuant to the Federal Acquisition Streamlining Act of 1994, 10 U.S.C. § 2304(g) (Supp. II 1996), as implemented in part 13 of the Federal Acquisition Regulation (FAR). Section 2304(g)(1) provides, in relevant part, as follows:

In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for . . . special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold

DSCR uses the automated procurement procedures for purchases of supplies of up to \$25,000, where the acquisitions are not complex or urgent; are not for weapons systems, back-ordered, or rebuy items; and do not involve government-furnished property. Under these procedures, RFQs are available only through the agency's electronic bulletin board (EBB) and quotations can be transmitted only in an electronic format using the agency's EBB. Vendors can access the EBB through the vendor's personal computer by dialing a telephone number or logging on to the Internet. First time users must register with the agency before proceeding to the EBB menu screens that offer the option to download solicitations or submit quotes (or perform such functions as reviewing the vendor's Automated Best Value Model past performance score).

CIS argues that the requirement that quotations submitted in response to the RFQ be transmitted through the agency's EBB violates the requirement under 10 U.S.C. § 2304(g)(3) (1994) that "[i]n using simplified procedures, the head of the agency shall promote competition to the maximum extent practicable." We disagree.

Where requiring electronic submission of quotations in a procurement using simplified acquisition procedures would increase efficiency and promote competition, without overly burdening prospective vendors, it is consistent with the statutory mandate that competition be promoted to the maximum extent practicable when simplified acquisition procedures are used. Arcy Mfg. Co., Inc. et al., B-261538 et al., Aug. 14, 1995, 95-2 CPD ¶ 283 at 3-5. Here, DSCR reports that requiring vendors to use its EBB promotes efficiency and economy by reducing DSCR's administrative costs and burdens, accelerating the procurement cycle, and reducing vendors' overall costs of doing business with the government. Although CIS questions whether DSCR has adequately documented the claimed benefits of its EBB, in some respects these benefits are self-evident. Most important, CIS has not suggested how or why the agency's conclusions are unreasonable, even with respect to eligible vendors such as the protester itself or others in the protester's business.

DSCR's reported experience is consistent with the experience of agencies generally, which have found that, with advances in information technology, the use of an electronic format can be more efficient than the use of a paper format and does not unduly restrict competition. NuWestern USA Contractors, Inc., B-275514, Feb. 27, 1997, 97-1 CPD ¶ 90 (issuance of solicitation only in electronic form (CD-ROM) is not unduly restrictive of competition). Moreover, DSCR's approach is consistent with the regulations governing the use of simplified acquisition procedures, which provide that "[p]aper solicitations for contract actions not expected to exceed \$25,000 should be issued only when obtaining electronic or oral quotations is not considered economical or practical." FAR § 13.106-2(a)(3).

The agency also maintains that using its EBB generally promotes, rather than diminishes, competition relative to a paper format by reaching more potential vendors than would otherwise be possible. In this regard, the agency maintains that

the statistics on usage of its EBB demonstrate that requiring EBB quotations has not diminished competition; according to the agency, there was a 27-percent increase in the number of participating vendors and a 65-percent increase in the number of EBB quotations received between October 1996 and August 1997. (The fact that four quotations were submitted in response to this RFQ also tends to support the agency's position that the requirement to use its EBB has not operated to impose an unreasonable burden on vendors.)

As mentioned above, the protester has not identified any basis to disagree with the agency's conclusion that any burden on vendors as a result of the EBB quotation requirement will be minimal and will not negatively affect the level of competition. Although a vendor seeking access to the EBB is required to have access to a personal computer, certain telecommunications software, and a modem, these items are readily available for purchase in the commercial marketplace, and should a vendor not desire to purchase such equipment, access to the EBB can be obtained by contacting an electronic data interchange provider. Arcy Mfg. Co., Inc. et al., supra, at 4. Accordingly, we conclude that requiring electronic submission of quotations here does not violate any statutory or regulatory provision.¹

In any case, it does not appear that CIS itself was precluded from competing under this solicitation or otherwise suffered competitive prejudice as a result of the EBB quotation requirement. DSCR reports, and CIS does not deny, that CIS acknowledged to contracting officials that it possesses the equipment necessary to access the EBB, but simply wished to retain the option of submitting a quotation by facsimile machine. Where the record demonstrates that an agency's actions have not prejudiced a firm protesting to our Office, we will not sustain the protest, even

¹CIS asserts that agencies are only permitted to require electronic quotations or offers where they are using the Federal Acquisition Computer Network (FACNET), an electronic data interchange system used to exchange acquisition information between the government and private sector vendors. There is, however, no current statutory or regulatory requirement that agencies use only FACNET when conducting simplified acquisitions by means of electronic procedures. Although the regulations governing the use of simplified acquisition procedures generally require the use of FACNET "when practicable and cost-effective," FAR § 13.103(g), they also clearly contemplate the possibility that FACNET may not be available or cost-effective, providing in that case that "quotations may be solicited through other appropriate means (e.g., orally, or in writing)." FAR § 13.106-2(a)(2). In this regard, DSCR notes that DLA currently is not FACNET certified. While the FAR provision mentions only oral or written quotations as alternatives, those means are given only as examples ("e.g.") and the provision explicitly permits solicitation through "other appropriate means," thus permitting the use of electronic means. There thus is nothing inherently improper in the agency's requiring submission of quotations through its EBB.

if a deficiency in the procurement, such as an impropriety in the conduct of discussions, is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). The protest would thus fail for lack of prejudice, even if the protester had established improper agency action, which it did not.

The protest is denied.

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