

Proc II

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

10,159

FILE: B-194046

DATE: May 14, 1979

MATTER OF: Tektronix, Inc.

CN6 02441

[Protest of Bureau of Mines Contract Award]

DIGEST:

1. When protester permits nearly five months to elapse between alleged oral protest to contracting agency and filing of protest with GAO, although aware that purchase order had been issued to competitor, protester has not diligently pursued matter and protest to GAO is untimely.
2. Regulations for negotiated small purchases give contracting officer broad discretion in determining how to meet Government's needs, and require only "reasonable," rather than maximum, competition. GAO review of small purchases therefore is generally limited to instances of fraud or intentional misconduct or where there is evidence that reasonable effort has not been made to secure quotations from representative number of firms.
3. In negotiated small purchase, award need not be made to firm offering lowest quotation; good faith finding that proposed award is to best advantage of Government, price and other factors considered, and that price is reasonable, is sufficient.

Tektronix, Inc. (Tektronix) protests the award of a contract by the Bureau of Mines, Department of the Interior, to Hewlett-Packard Company (Hewlett-Packard). The protester alleges that its quotation for a graphics display-type communications terminal was improperly rejected, and that the agency improperly allowed its competitor to reduce its price after the closing date for receipt of quotations.

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We find part of the protest untimely and the remainder without merit for the following reasons.

The Bureau of Mines' Section of Small Purchases, Denver, Colorado, issued a request for quotations (RFQ) for the terminal on August 1, 1978. According to the agency, at that time the equipment was not on the Federal Supply Schedule. The solicitation was synopsized in the Commerce Business Daily and was sent to Tektronix and Hewlett-Packard. Both firms submitted quotations before the September 5, 1978, closing date--Tektronix for \$7,693.73 and Hewlett-Packard for \$8,456.45.

On September 18, 1978, Hewlett-Packard, which in the interim had been awarded a General Services Administration contract placing its terminals on the Federal Supply Schedule, submitted a revised quotation for \$7,342.80, with an optional item for an additional \$369.75. This quote represented the 13 percent discount available under the Federal Supply Schedule contract.

Meanwhile, the Bureau of Mines evaluated the equipment offered by both firms and determined that Tektronix's proposed terminal did not meet its specifications and, as a result of Hewlett-Packard's revised quotation, also cost more than Hewlett-Packard's. A purchase order was then issued to Hewlett-Packard for the terminal and optional item at a price of \$7,712.55.

Tektronix's protest to our Office alleges that its equipment was "technically and contractually most compliant," and lower in price than Hewlett-Packard's. Tektronix also protests that Hewlett-Packard was allowed to submit a revised quotation after the date for receipt of quotations specified in the solicitation.

The Bureau of Mines states the protest is untimely. It notes that Tektronix was notified by telephone on or about September 20, 1978, that the purchase order had been issued to Hewlett-Packard, and while Tektronix at that time stated that it wished to discuss the finding that its equipment did not meet specifications, no further discussions between the agency and the protester took place.

Tektronix, on the other hand, alleges that on or about September 26, 1978, it informed the Bureau of Mines by telephone that it wished to protest, and was advised that the conversation was sufficient to initiate a protest. In December, Tektronix alleges, it again contacted the Bureau of Mines and was then advised to file a written protest. However, Tektronix did not file a protest with our Office until February 6, 1979. (Although Tektronix's letter was dated January 18, 1979, it was postmarked February 1, 1979, and was received on February 6, 1979. Protests to our Office are considered filed on the date received. See 4 C.F.R. § 20.2(b)(3) (1978).)

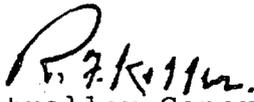
Even if we assume that Tektronix's telephone conversation constitutes an oral protest to the Bureau of Mines, we do not believe the firm's subsequent protest to our Office can be considered timely. Obviously, Tektronix failed to diligently pursue the matter as required, allowing nearly five months to elapse before it followed up its unanswered protest to the agency with a protest to our Office. Accordingly, the protest regarding the acceptability of Tektronix's equipment is untimely, and will not be considered on the merits. Westwood Pharmaceuticals Inc., B-191443, March 31, 1978, 78-1 CPD 261.

However, the issue of the propriety of the Bureau of Mines' acceptance of Hewlett-Packard's revised quotation was timely raised, since the record shows Tektronix first learned of this during the course of the protest and then objected within 10 working days thereafter. See 4 C.F.R. § 20.2(a)(2) (1978).

This was a negotiated procurement, conducted according to Federal Procurement Regulations (FPR) subpart 1-3.6 (1964 ed., amend. 153) covering small purchases. These regulations give a contracting officer broad discretion in determining how to meet the Government's needs, and require only "reasonable," rather than maximum, competition. As a general rule, our review therefore is limited to instances of fraud or intentional misconduct or where there is evidence that a reasonable effort has not been made

to secure quotations from a representative number of firms. Custom Burglar Alarms, Inc., B-192351, January 18, 1979, 79-1 CPD 30. No such actions have been alleged here.

We note, however, that a small purchase need not be awarded to the firm offering the lowest quotation. A good faith finding by the contracting officer that a proposed award is to the best advantage of the Government, price and other factors considered, and that the price is reasonable, is sufficient. Ikard Manufacturing Company, B-192308, October 25, 1978, 78-2 CPD 301; FPR § 1-3.603-1(a)(1) supra. In this case, the Bureau of Mines determined that Tektronix's equipment would not satisfy its requirements and acceptance of its offer therefore would not be in the Government's interest. On the other hand, Hewlett-Packard was the only firm offering technically acceptable equipment. Under these circumstances, we believe acceptance of Hewlett-Packard's offer was clearly in the best interest of the Government and we fail to see any impropriety in the Government's acceptance of Hewlett-Packard's unsolicited price reduction.


Deputy Comptroller General
of the United States