

DECISION

025775
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209200**DATE:** June 2, 1983**MATTER OF:** Aydin Vector**DIGEST:**

1. Where the protester argues that the agency recorded its oral quotation incorrectly on the bid abstract and where the only other evidence available is the protester's conflicting statement, the protester has not met the burden of affirmatively proving its case.
2. The agency did not act improperly in evaluating a prompt-payment discount under small purchase solicitation even though at time award was made the Defense Acquisition Regulation (DAR) was amended to preclude such evaluation under formally advertised procurements since it was not clear at that time that the policy against evaluation of such discounts extended to small purchase procedures.

Aydin Vector protests the award of a purchase order for ten telemetry transmitters by the Naval Weapons Center, China Lake, California to Microcom Corporation under request for quotations (RFQ) No. N60530-82-Q-N266. Aydin contends that the award to Microcom was improper because Aydin offered the lowest oral quote at \$2,478 per unit, but the Navy erroneously recorded it as \$2,487 and improperly considered a prompt payment discount offered by Microcom, thus reducing Microcom's evaluated unit price to \$2,482.52. For the reasons stated below, we deny the protest.

The RFQ was issued on August 9, 1982 pursuant to the small purchase procedures of Defense Acquisition Regulation (DAR) § 3-600 et seq. The agency received two quotes, one totaling \$31,140 from Microcom and another from Aydin at \$33,760. Since both quotes exceeded the maximum small purchase authority of \$25,000, the buyer deleted a testing requirement from the RFQ and on September 8 orally solicited amended quotes for ten transmitters only. The agency reports that Microcom called and offered a total

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price for the ten units of \$24,950 with a one-half-percent discount for payment within 20 days, while Aydin called in its price which was recorded as \$24,870. The buyer evaluated the discount offered by Microcom and awarded the contract to that firm.

First, Aydin argues that its oral quote was for a total price of \$24,780 but that the buyer incorrectly recorded its price as \$24,870. The agency report includes a statement from the buyer that Aydin quoted a unit price of \$2,487 for the ten items. Further, the bid abstract prepared on September 9 indicates that Aydin's price was \$2,487 per unit. The protester has the burden of proving its case and where, as here, the only evidence, other than the abstract, consists of conflicting statements by the protester and contracting officials, that burden is not met. Office Products International, Inc., B-209610, April 5, 1983, 83-1 CPD 363. Thus, we will not question the buyer's use of \$24,870 as Aydin's unit price.

Aydin complains that even if we accept the agency's view that its total price was \$24,870, its quote was still lower than Microcom's price of \$24,950. The protester points out that Microcom only became the low quoter because the agency improperly evaluated Microcom's prompt payment discount.

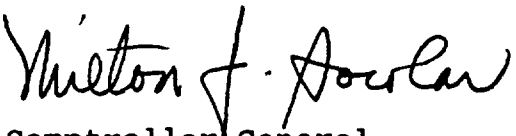
It appears that prior to issuing the subject solicitation, the contracting activity received notice that the regulation pertaining to consideration of prompt payment discounts had been changed; agencies were directed no longer to consider prompt payment discounts offered by bidders when evaluating bids. See Defense Acquisition Circular (DAC) 76-36, June 30, 1982, amending DAR § 2-407.3. Nevertheless, since DAC 76-36 only revised DAR § 2-407.3, which applies to procurement by formal advertising and did not refer to DAR Section 3 which governs negotiated procurements, including small purchases, the buyer decided to evaluate prompt payment discounts in accordance with her view of an existing policy to evaluate such discounts in small purchases. See DAR § 3-608.2(c) and (d)(iii). Subsequent to the September 9 award to Microcom, the Department of Defense on November 26 issued DAC 76-40 which stated that:

"while not expressly stated, the change in policy [the elimination of the evaluation of prompt-payment discounts in DAC 76-36] was intended to apply equally to advertised and negotiated awards, including simplified small purchases."

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We do not believe under the circumstances that the buyer acted improperly by evaluating Microcom's prompt payment discount. While the RFQ did not specifically state that such discounts would be evaluated and the regulations did not require such an evaluation under the small purchase procedure, the solicitation provided a place for the insertion of such discounts and the regulations encouraged buyers to obtain these discounts. See DAR § 3-608.2(c). In view of this and considering the fact that the regulation drafters recognized in DAC 76-40 that there was a policy to evaluate prompt payment discounts under small purchases, and that DAC 76-36 did not clearly apply to such procurements, we have no basis to object to the buyer's evaluation of Microcom's prompt payment discount. See generally Emerald Maintenance, Inc.; The Big Picture Company, B-209082, B-209219, March 1, 1983, 83-1 CPD 208.

The protest is denied.

for 
Comptroller General
of the United States