

DECISION

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

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FILE: B-213452**DATE:** March 6, 1984**MATTER OF:** Adams-Keleher, Inc.**DIGEST:**

1. Where protester contends it was not orally solicited for certain requirement and agency contends protester was advised of requirement, protest is denied where record indicates miscommunication probably occurred and agency obtained adequate competition and reasonable price.
2. Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of affirmatively proving its case.

Adams-Keleher, Inc. (AKI), protests the award to Contech of a contract (No. 68-01-6834) for a teleconferencing bridge system with 48 usable ports under Environmental Protection Agency (EPA) oral solicitation No. WA-83-D965. AKI contends that it was never requested to submit a price quotation on the procurement and requests that the award be canceled and the procurement resolicited.

We deny the protest.

The EPA states that four firms, including AKI, were orally requested on September 26, 1983, to submit price quotations by 3:30 p.m., on September 28, for a teleconferencing bridge system with 48 usable ports. This was an oral solicitation under section 1-3.202(b)(2) (1964 ed. amend. 192) of the Federal Procurement Regulations in view of an urgent need to procure the system before the end of the fiscal year. The three other firms agree that they were requested to submit quotations on such a system, although two of these place the date of the solicitation as September 27. Contech agrees that the date was September 26.

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Prior to the oral solicitation (between late August and mid-September 1983), the EPA Telecommunications Manager explored the market to determine at what prices teleconferencing bridge systems with various numbers of ports might be purchased if the needs of the EPA Office of Public Affairs could be met better through a purchase rather than through a continuation of the lease from AKI of a 16-port (14 usable) teleconferencing bridge system. In response to this inquiry, AKI provided the following quotations to the Telecommunications Manager:

8-port system	\$26,000.00 (installation) (and maintenance)
16-port system	34,000.00 (included)
16-port system-lease buy out	35,631.96

Contech provided the following price quotations during the market survey:

24-port system (24 usable ports)	\$32,400
36-port system (36 usable ports)	56,250
48-port system (48 usable ports)	64,800

The Contech price quotations were recorded as above on the "Cost Comparison" document. The AKI quotations were recorded on that document in the following manner:

"16 Port System	14 usable ports	\$35,631.96 . . .
Installation		-0-
32 Port System	28 usable ports	69,631.96 . . .
Installation		1,500.00
		<u>\$71,131.96 . . .</u> "

At some point, someone circled the 48 of the "48 Port System" Contech quotation recorded on the "Cost Comparison" document and added the 16- and 32-port systems portion of the AKI quotation on the document to total a 48-port system. No visible differentiation was made as regards the fact that Contech was quoting on 48 usable ports as one system, whereas AKI had quoted on more than one system, the ports for which were not all usable.

The oral quotations the EPA advises it received on September 26 were recorded by hand as follows:

"Contech 48 Port System	\$64,800.00
CEAC [AKI] 48 00 Port System	\$71,131.96 69,631.96
Darome 48 Port System	\$120,000.00 100,600.00
AT&TIS	\$120,000.00"

These prices (except for the price of AKI) were then increased by an evaluation amount of \$4,631.96 (the cost of buying out the AKI lease, a figure EPA states it obtained from AKI on September 26) to result in evaluated prices of \$69,431.96, \$69,631.96, \$105,231.96, and \$124,631.96, respectively. Award was made to Contech on September 29. The agency advises that it had no idea until the AKI protest was filed that the AKI quotation represented the price of a 32-port rather than a 48-port bridge system.

AKI states that during the entire month of September, it was receiving requests from the EPA Telecommunications Manager and/or EPA contracting personnel for price quotations for systems consisting of an 8-port bridge, a 16-port bridge, and/or for the purchase of its leased 16-port bridge system and lease, but that it was never asked to quote on a 48-port bridge system. Even on September 29, AKI states, when it orally furnished the contract specialist with the \$4,631.96 quotation for the lease buy out, as well as the price for a 16-port bridge system, it was told nothing of the 48-port bridge system procurement. AKI allegedly did not learn of the 48-port requirement or of the award until October 12 when it called EPA contracting personnel to inquire how the agency would fulfill its needs. In support of this alleged sequence of events, AKI contends that its policy is to follow oral quotations by submitting a written quotation to the contracting agency, and EPA has furnished our Office with no written AKI quotation to support the EPA assertions. AKI also submits that the fact that the \$69,631.96 quotation EPA alleges AKI submitted is the exact total of the \$34,000 (for a 16-port bridge system) and \$35,631.96 (for the 16-port bridge system-lease buy out) price quotations it provided proves that no quotation was requested of AKI for the 48-port bridge. In this regard, AKI notes the unlikelihood that it would submit a price for a 48-port bridge system which would be exactly the same as the price the agency had "computed" on the "Cost Comparison" document for an AKI 32-port bridge system (a quote for which AKI never was asked).

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EPA argues that the contract specialist contacted all four firms and gave each the same information regarding the procurement and the requirement. The quotations were then recorded.

Based on our review of the record, we cannot say the protester has met its burden of affirmatively proving its case since the only evidence before our Office is the conflicting statements of the protester and the agency. Because of the numerous requests for quotations for various size systems, lease buy out and confusion about usable and nonusable ports, we believe there was probably miscommunication between the parties which led to a misunderstanding of the requirement.

We judge the propriety of a particular procurement not on whether every potential offeror was included, but whether reasonable prices were obtained through adequate competition, unless there is evidence that the agency consciously attempted to exclude a possible competitor. W. H. Mullins, B-207200, February 16, 1983, 83-1 CPD 158. There is no such evidence here. At least three firms competed for the requirement and a reasonable price was obtained.

The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States