

DECISION

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

28561

FILE: B-213303

DATE: June 18, 1984

MATTER OF: Le Prix Electrical Distributors, Ltd.

DIGEST:

1. In a procurement of parking lot lighting fixtures pursuant to small purchase procedures, the agency did not deprive quoters of a fair and equitable competition by selecting from comparable fixtures one which was not the least expensive but whose features were determined to be most advantageous to the government.
2. A challenge to the qualifications of the person who evaluated quotations will not be considered by GAO absent allegations of fraud, bad faith or conflict of interest.
3. Protest not received in GAO within 10 working days after protester knew or should have known of the basis of its protest is untimely.

Le Prix Electrical Distributors, Ltd. protests the issuance of a purchase order for parking lot lighting fixtures to V-A-R of Tennessee under request for quotations (RFQ) No. E-164, issued by the Veterans Administration Medical Center, Memphis, Tennessee. Le Prix's low quotation was rejected because the VA determined that the product offered by Le Prix was technically inferior to the product specified in the RFO. Le Prix essentially contends that its product is equal to the product specified and thus it should have received the award.

We deny the protest in part and dismiss it in part.

The RFO, issued under the small purchase procedures described in Federal Procurement Regulations § 1-3.600 et seq., called for quotations for 20 "Verd-A-Ray low pressure sodium area lighter with lamp, 180 watt, 480 volts, #SRP252P, pole mount." The three low quotations received in response to the solicitation were as follows:

<u>Quoter</u>	<u>Fixture Offered</u>	<u>Unit Price</u>
Le Prix	Hals-180	\$198.00
Revere	Quality Lighting	231.95
V-A-R of Tenn.	Verd-A-Ray	249.85

All quotations received, along with any descriptive literature accompanying them, were referred to the Chief of the Medical Center's Engineering Service for an evaluation of the different models offered. The evaluator concluded that the Verd-A-Ray model was technically superior to the Hals-180 and Quality Lighting models. Comparing the Verd-A-Ray and Hals-180 models, the evaluator determined that while both models have a plastic ring on the mast arm to prevent the entry of insects, the Verd-A-Ray model has a better light pattern and it has stainless steel exterior hardware which is preferable to the aluminum hardware on the Hals-180. The evaluator also concluded that the Verd-A-Ray fixture was preferable to the Quality Lighting one based on a comparison of their light patterns and because the Quality Lighting fixture had gaskets only on the lens. Based especially on the difference in light patterns, the Engineering Service recommended the purchase of Verd-A-Ray fixtures. The contracting officer consequently issued a purchase order for the fixtures to V-A-R on September 29.

Le Prix argues that it should have been awarded the contract because it offered the lowest-priced low pressure sodium, 180-watt, 480-volt, pole-mounted fixture with lamp. In other words, Le Prix maintains that the product it offered satisfied all the characteristics of the Verd-A-Ray fixture which were listed in the solicitation. Le Prix further maintains that to the extent the solicitation failed to list other characteristics to be considered--such as light pattern or construction features--the RFQ was defective. Le Prix also disputes the determination that the Hals-180 fixture is inferior to the brand name product, arguing that the lighting pattern of its product is not inferior to that of Verd-A-Ray and that an aluminum housing is better than stainless steel for the use involved here. Furthermore, Le Prix questions the qualifications of the person who performed the evaluation of the different fixtures.

The VA contends that the award to V-A-R was proper. It notes that our Office has stated that on procurements under small purchase procedures, the government need not

award the contract to the firm offering the lowest quotation, and our review of such procurements is limited to cases of fraud or intentional misconduct on the part of the procuring activity, or where it appears that the procuring activity has not made a reasonable effort to secure price quotations from a representative number of responsible firms as anticipated by the small purchase regulations. See Ikard Manufacturing Company, B-192308, October 25, 1978, 78-2 CPD ¶ 301. The VA states that V-A-R offered "a technically superior product" and although V-A-R was not the low quoter, the contracting officer made a good faith finding that it was in the government's best interest to award the contract to that firm. The agency concludes that the protest should be denied because Le Prix has not alleged, nor was there in fact, fraud or intentional misconduct on the part of the procuring activity, and the procuring activity made a reasonable effort to secure price quotations.

Small purchase procedures are designed to minimize the administrative costs of acquiring relatively inexpensive items. Therefore, a contracting officer need only solicit quotations from a reasonable number of potential sources, judge the advantages and disadvantages of each quotation in relation to the prices quoted and determine in good faith which quotation will best meet the needs of the government. R.E. White & Associates, Inc., 61 Comp. Gen. 320 (1982), 82-1 CPD ¶ 294. After quotations are solicited and the field of competition thus is defined, the procurement still must be conducted and concluded consistent with the small purchase selection procedures and the concern for a fair and equitable competition that is inherent in any procurement. To this end, we will review a contracting officer's decision that a higher quotation in fact is more advantageous to the government. R.E. White & Associates, Inc., supra.

Clearly, there is room for discretion in the contracting officer's award of a contract pursuant to the small purchase procedures. Nevertheless, he or she must still maintain a fair and equitable competition. We have found this standard not to have been met, and have sustained protests, where the government solicited quotations under one standard but made award on the basis of another. In Le Prix Electrical Distributors, Inc., B-212078, Nov. 15, 1983, 83-2 CPD ¶ 562, for example, we sustained the protest where after soliciting quotations on a brand name or equal basis the agency decided that only the brand name item

would meet its needs but did not give quoters an opportunity to compete on that basis. Once a decision is made to change the government's requirements, we stated, the solicitation must be amended to give quoters the opportunity to compete on the new requirements. Similarly, where a solicitation for a metal disintegrator included a specification requirement that it remove a 3/4 inch broken tap in less than 4 minutes, and the agency accepted a machine which took 7 minutes, we sustained the protest, stating that all quoters should have been given the opportunity to compete on the basis of the revised, relaxed specifications. Uni-Tek Manufacturing Company, B-208324, Nov. 29, 1982, 82-2 CPD ¶ 483.

We do not believe that the VA's actions in this case amount to the denial of a fair and equitable competition. This is not a case, like Le Prix and Uni-Tek, supra, where the government announced that it was using one standard in the evaluation of quotations and then in fact used another. Rather, the three low quotations presented a choice of comparable products whose unit cost ranged from approximately \$200 to \$250. As we indicated above, it was within the contracting officer's discretion to judge the advantages and disadvantages of each quotation in relation to the prices quoted and determine which best met the needs of the government. Here, the contracting officer decided it was in the government's best interest to spend about an additional \$50 per fixture in order to obtain a superior lighting pattern and stainless steel exterior hardware. Although Le Prix has in general terms disputed the technical disadvantages of the Verd-A-Ray fixture, the protester has submitted no evidence to us which would indicate that the VA's evaluation was unreasonable.

Le Prix also questions whether the evaluation of the lighting fixtures was conducted by a certified electrical lighting engineer and states that if the evaluator is not certified then the results of the evaluation should not be considered. However, the choice of evaluators is within the discretion of the contracting agency and will not be reviewed by our office absent allegations of fraud, bad faith or conflict of interest. Our Office generally will not become involved in appraising the qualifications of agency personnel. See Drinkwater Engineering, Inc., B-206368, Nov. 2, 1982, 82-2 CPD ¶ 400. Le Prix's inquiries about the evaluator's qualifications provide no basis for us to consider this matter.

Finally, Le Prix contends that the awardee "furnished lamps that were not manufactured in the United States" and

that "the specified and furnished lighting fixture company is foreign owned." These contentions are untimely. Le Prix did not raise these issues until, by letter of December 29, 1983, received in our Office on January 4, 1984, it submitted its comments on the agency report. Le Prix knew of the award to V-A-R when it filed its protest on October 5. Our Bid Protest Procedures provide that a protest must be filed within 10 working days after the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). Since the protest on these issues was filed by Le Prix well beyond the 10 working days required, it is untimely and will not be considered.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States