



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Lundia  
**File:** B-232494  
**Date:** December 23, 1988

### DIGEST

Protest that award using small purchase procedures was improper because the procuring agency allegedly made award on a different basis than orally negotiated is denied where the protester mistakenly concluded that preliminary inquiry with it to determine minimum needs made by unauthorized procuring officials constituted oral negotiations.

### DECISION

Lundia protests the award of a purchase order to Interior Metal and Erection Company (IMEC) to perform all aspects of moving a filing and storage system from the Matomic Building, Washington, D.C., to the Government Printing Office (GPO), Receiving Station, Laurel, Maryland. The requirement was orally solicited by the Nuclear Regulatory Commission (NRC) pursuant to small purchase procedures under requisition No. 806623. Lundia contends that offerors competed on an unequal basis because the specifications reflected in the purchase order allegedly were different from the requirements that NRC orally related to quoters during negotiations.

We deny the protest.

This procurement was to move a Lundia PD-1 power filing and storage system. Since Lundia had manufactured the system, personnel from NRC's Freedom of Information and Publication Services (FIPS) contacted Lundia for advice on how to move the system. On August 31, 1988, FIPS provided NRC procurement officials with a requisition which described the work required to move the system to the GPO Receiving Station. Because of an impending agency move, dismantling and removal of the system from the Matomic Building had to be completed by September 7.

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The purchasing agent that conducted negotiations states in an affidavit that four firms, including Lundia, were contacted by telephone between August 31 and September 1. The purchasing agent read the entire specification, as it appeared in the requisition, to Lundia and one other firm while another firm indicated that it was not interested due to the short time frame for performance. The remaining firm, Commercial Transfer Systems (CTS) was contacted and read the specification by the purchasing agent's supervisor. Lundia quoted a price of \$19,824.11, IMEC quoted a price of \$19,500, and CTS quoted a price of \$20,000. Since IMEC was the low quoter, on September 2, NRC awarded the contract to IMEC. On September 14, NRC advised our Office of its decision to proceed with performance notwithstanding the protest.

Lundia contends that NRC caused it to believe that certain requirements which did not appear on the purchase order--such as new decking, safety ramp, tile, and a 2-year parts and labor warranty--were required to meet the agency's needs. Lundia argues that these additional items caused its quotation to be substantially higher than necessary to meet the requirement listed in the purchase order issued to IMEC. Further, Lundia also has submitted sworn statements from itself and CTS which deny that NRC read any specification to quoters.

Lundia states that FIPS contacted it in August about relocating the Lundia PD-1 system. Because there were no specifications describing the work, Lundia states it was forced to ask FIPS several questions in order to determine the agency's needs. During the conversation, Lundia states that it suggested, and FIPS agreed, that new decking and a ramp be provided with a tile covering instead of the existing carpet, since the system would be located in a warehouse out of public view. Lundia further states that FIPS agreed that the existing area should be broom cleaned and all waste material removed after relocating the system and that a 2-year warranty period was desirable. Lundia alleges that, at this time, it provided FIPS with a price for doing the work and FIPS only indicated that the procurement office would be calling to confirm pricing. Therefore, Lundia states that when the purchasing agent contacted it on September 1, it was only to confirm its price of \$19,824.11.

We generally limit our consideration of protests against the contracting agency's approach to defining the field of competition for small purchases since small purchase procedures permit purchases without the need to maximize

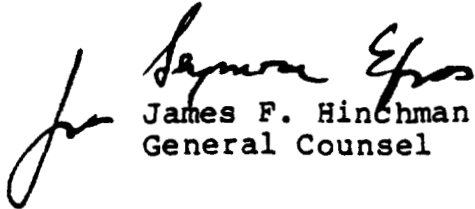
competition. Brennan Associates, Inc., B-231554, Sept. 1, 1988, 88-2 CPD ¶ 203. However, once the field of competition is established for a small purchase, the procurement must be conducted in a manner consistent with the principles of fair and open competition inherent in any procurement. Id.

Based on what occurred prior to the negotiation process, it appears that Lundia is confusing FIPS's preliminary inquiry about moving the systems with the oral negotiations. That informational inquiry was made by FIPS prior to the oral negotiations in order to draft a requisition reflecting its minimum needs, not by authorized procuring officials. However, Lundia's argument and its sworn statement are premised on the argument that this conversation constituted discussions during which the specifications were established and at which time Lundia submitted its quote. Lundia goes on to assert that the September 1 negotiations were merely for the purposes of confirmation and that "because my figures were known beforehand, [NRC's] request was simply to confirm the pricing figures."

Lundia is misconstruing the initial inquiry from FIPS as the negotiations. In fact, the requirements which Lundia states were discussed in that preliminary conversation simply do not appear in the written requisition that was used by the purchasing agent, who was the only person with whom Lundia spoke who had authority to conduct negotiations for NRC. Rather, the requisition contains the identical specifications which appear in the purchase order. While Lundia understood the purchasing agent's call to be merely a request to confirm the substance of the earlier call, the purchasing agent was requesting a quote on the basis of the current requisition specifications. However, although there was a misunderstanding, there is no evidence that the purchasing agent acted in a manner which was intended to mislead Lundia. We have recognized that, while unfortunate, misunderstandings are likely to result under small purchase procedures when quotations are solicited orally. Nevertheless, that a misunderstanding arises does not establish a valid basis for protest unless the protester can show that it was intentionally misled by contracting personnel. See Porta-Fab Corp., B-213356, May 7, 1984, 84-1 CPD ¶ 511. Here, since there is no indication that the purchasing agent

deliberately misled Lundia concerning the specifications, we find no basis to conclude that NRC's award to IMEC was improper.

The protest is denied.

James F. Hinchman  
General Counsel