



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: East West Research Inc.
File: B-239565; B-239566
Date: August 21, 1990

Richard Snyder, for the protester.
Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging issuance of purchase orders to firms other than the protester under two requests for quotations (RFQ) issued using small purchase procedures is sustained where the record shows that during a period of less than 1 week the contracting activity received, but lost, two quotations submitted by the protester in response to the RFQs, and thus effectively breached its duty under the Competition in Contracting Act of 1984 to promote competition to the maximum extent practicable when using small purchase procedures by failing to reasonably safeguard the quotations received.

DECISION

East West Research Inc. protests the issuance of a purchase order for single stage valves to UPD, Inc. under request for quotations (RFQ) No. DLA700-90-X-U073, issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC), Columbus, Ohio. East West also protests DCSC's award of a purchase order for brass valves to Amerigas, Inc. under RFQ No. DLA700-90-X-V285. East West contends that in both cases it submitted lower priced quotations than the awardees' and that the orders therefore should have been placed with it. The agency states that as of the time of the awards it had not received any quotations from the protester.

We sustain the protests.

On November 6, 1989, DCSC issued RFQ No. DLA700-90-X-U073 under small purchase procedures for 22 regulating, fluid

pressure automatic, single stage valves. The RFQ specified L-TEC Welding and Cutting System's part No. 998124 as the approved manufacturer part number. The agency received quotations from three small business dealers by the December 6 closing date, each offering the designated L-TEC part. On March 26, 1990, DCSC awarded a purchase order to UPD, which had quoted the lowest unit price of \$101.

East West states that it submitted a lower quotation than UPD's in response to the RFQ and that it therefore should have been awarded the purchase order. According to the protester, on November 28, 1989, it transmitted via telefacsimile machine a quotation of \$85.97 per unit for an alternate item, Weldit part No. W-473. As proof of this transmission, the protester has furnished us with a copy of a status report from its telefacsimile machine which shows that East West sent a 5-page message to DCSC's telefacsimile machine at 11:07 p.m. on November 28, and a copy of a transmission result report confirming that DCSC-Columbus received a 5-page message from East West at 11:11 p.m. on November 28. In addition, East West has furnished us with a copy of the quotation that it sent.

The agency confirms that it received a 5-page transmission from East West, which it logged in at 7:40 a.m. on November 29. The agency's records do not describe the contents of the 5-page transmission. Nevertheless, the agency argues that there is no evidence that the transmission was a quotation in response to RFQ No. DLA700-90-X-U073, or that it was identical to the copy that East West submitted with its protest; thus, according to the agency, award to East West, based on the copy of the quotation that it submitted with its protest, would be incompatible with safeguarding the integrity of the competitive system.

The facts regarding RFQ No. DLA700-90-X-V285 are similar. On November 2, 1989, DCSC issued the RFQ on an unrestricted basis under small purchase procedures. The RFQ asked for quotations on five regulating, fluid pressure brass valves, and specified Amerigas, Inc., part No. SR 3BJ-580 as the approved manufacturer part number. The contracting officer did not receive any quotations by the December 4 closing date. She subsequently asked Amerigas to submit a quotation, and on February 9, 1990, Amerigas offered its own approved part number at a unit price of \$200. On February 21, DCSC awarded a purchase order to Amerigas for a total price of \$1,000.

As with RFQ No. DLA700-90-X-U073, East West states that prior to the closing date it submitted a lower quotation via

telefacsimile machine. According to the protester, it submitted a quotation of \$142.29 per unit for an alternate item, Vediflo part No. 5802-580, modified, on November 24, 1989. Again, East West offers as proof of the transmission a status report from its machine that shows that a 5-page message was sent to DCSC at 6:19 p.m. on November 24, and a transmission result report confirming that DCSC-Columbus received a 5-page message at 6:23 p.m. on November 24. The agency confirms that it received a 5-page message from East West on the morning of November 24, but argues that there is no evidence that the message was a quotation in response to this RFQ or that the price quoted was \$142.29.

We disagree with the agency's assertion that there is no evidence that the messages transmitted by East West were quotations responding to the RFQs in question. The agency's records indicate that the intended recipient of the November 29 transmission from East West was "PC7755 Wise," an apparent reference to Jacquelin L. Wise, the buyer for RFQ No. DLA700-90-X-U073. Similarly, the agency's records indicate that the intended recipient of the November 24 message was "PC8787," which the agency informs us is the number assigned to the buyer for RFQ No. DLA700-90-X-V285. While not conclusively establishing that the transmissions from East West were quotations in response to the subject RFQs, we think this evidence strongly suggests that they in fact were.

We agree, however, that there is no independent evidence, apart from the protester's own assertions, that the quotations that it telefaxed on November 24 and November 28 were in fact identical to the copies that it submitted with its protest. Therefore even if it were otherwise practicable, we would not recommend that the competition be reopened and East West's quotations considered. Where a bid or quotation is received by the agency and lost prior to the bid opening or closing date, the vendor cannot be permitted to resubmit its bid or quotation since there is no certainty that a subsequently submitted copy would in fact be identical to the original received and lost. Displacing an otherwise successful offeror on the basis of a bid or quotation provided after the closing date would not be consistent with maintaining the integrity of the competitive system. Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244.

We nonetheless sustain the protest. Under the Competition in Contracting Act of 1984 (CICA), contracting agencies generally are required to obtain full and open competition through the use of competitive procedures in procuring goods and services. 10 U.S.C. § 2304(a)(1)(A) (1988). The


statute, however, specifically authorizes the use of special simplified procedures for purchases of property and services that are not expected to exceed \$25,000, subject to the requirement to promote competition "to the maximum extent practicable." 10 U.S.C. § 2304(g)(1). Under Federal Acquisition Regulation § 13.106(b)(5), the solicitation of three suppliers is considered to promote competition to the maximum extent practicable. We have held, however, that the solicitation of three or more suppliers "does not automatically mean that the maximum practicable competition standard has been met" since an agency is required "to do more than simply solicit a minimum number of suppliers"; it must afford all eligible responsible vendors expressing interest in competing a reasonable opportunity to compete. Gateway Cable Co., 65 Comp. Gen. 854, 857 (1986), 86-2 CPD ¶ 333. We think this means not only providing a copy of the RFQ to a vendor upon request, which the agency failed to do in Gateway, but also having procedures in place to receive quotations, to reasonably safeguard the quotations actually received, and ultimately to give them fair consideration. Obviously, it does little good to require an agency to provide a copy of an RFQ to a vendor interested in competing if the agency is free to lose the quotation received from that vendor.

We recognize, as a practical matter, that even with appropriate procedures in place, an agency occasionally will lose or misplace a bid or quotation, especially when the procuring activity is responsible for a high volume of small purchase buys. Indeed, we have taken the position that the occasional negligent loss of a quotation by an agency does not entitle the supplier to any relief. See Interstate Diesel Serv., Inc., B-229622, supra.

Here, however, we are concerned by the fact that two quotations from the same party were lost by the same contracting activity within less than 1 week. The agency has provided no explanation for these losses. Under the circumstances, we view the matter as involving more than mere occasional negligence on the agency's part; rather, it constitutes a breach of the agency's duty under CICA to promote competition to the maximum extent practicable. Accordingly, we sustain the protest on this basis. Since no

other remedy is feasible, we find that the protester is entitled to recover its quotation preparation costs as well as its protest costs. See Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1990).

The protests are sustained.


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