



Comptroller General
of the United States

Washington, D.C. 20548

Westfall / Mc Grail 143466

Decision

Matter of: Defense Logistics Agency--Reconsideration
File: B-239565.2; B-239566.2
Date: March 19, 1991

Suzanne McKenna, 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

Decision sustaining protests challenging agency's failure to safeguard quotations which the protester submitted is affirmed where although the agency was not obligated to seek competitive quotations for the purchases, it did in fact issue requests for quotations (RFQ), and once it had made the RFQs publicly available, it had a duty to permit all eligible vendors expressing an interest a reasonable opportunity to compete and to fully and fairly consider their quotations.

DECISION

The Defense Logistics Agency requests reconsideration of our decision East West Research Inc., B-239565; B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, in which we sustained two protests by East West: one against the award of a purchase order for single stage valves to UPD, Inc. under request for quotations (RFQ) No. DLA700-90-X-U073, and the other against the award of a purchase order for brass valves to Amerigas, Inc. under RFQ No. DLA700-90-X-V285.

We affirm our prior decision.

In both procurements challenged by the protester, the agency lost--and therefore failed to consider--quotations submitted by East West. We were concerned by the circumstance that two quotations from the same party had been lost by the same contracting activity within less than 1 week, a coincidence which we viewed as involving more than mere occasional negligence on the agency's part. We sustained the protests on the grounds that such repeated losses by the agency constituted a breach of its duty under the Competition in Contracting Act of 1984 (CICA) to promote competition for small purchases to the maximum extent practicable.

In its request for reconsideration, the agency argues that there is no evidence in the record to support our finding that its loss of East West's quotations constituted more than mere negligence. The agency contends that the loss of a quotation by an agency should be viewed as more than negligence only where there is evidence that agency officials acted in bad faith or deliberately attempted to exclude a firm from the competition.

In this case, it was not simply the fact that the agency had lost two quotations that raised our concern--it was the fact that two quotations from the same firm had been lost in a period of less than one week and that the agency had offered no explanation as to the procedures that it had in place to protect against such occurrences. We were--and continue to be--of the view that this combination of circumstances constituted more than mere negligence on the part of the agency officials.

The agency also argues that it did not breach its duty to promote competition to the maximum practicable extent since that duty did not apply to these acquisitions. The agency explains that prior to issuance of these RFQs, the Assistant Secretary of Defense (Production and Logistics) had authorized a class deviation from the small purchase procedures set forth in Federal Acquisition Regulation (FAR) § 13.106, which increased the dollar limitation on purchases which could be made without solicitation of competitive quotations from \$1,000 to \$2,500.^{1/} DLA contends that since the value of neither purchase exceeded \$2,500, it had no obligation to promote competition to the maximum extent practicable.

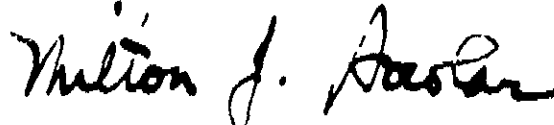
The fact that the field of competition in small purchases has been narrowed by regulation does not remove the fundamental obligation of agencies to fully and fairly consider responses to requests for bids and quotations. CMI Corp., B-211426, Oct. 12, 1983, 83-2 CPD ¶ 453. See also Gateway Cable Co., 65 Comp. Gen. 854 (1986), 86-2 CPD ¶ 333; FAR § 14.401 (receipt and safeguarding of bids). In part this obligation means that DLA was required to have procedures in place to safeguard any quotations received. Since the agency did not explain what procedures, if any, were in place, the agency's logs strongly

^{1/} Prior to its revision on July 23, 1990 (FAC 84-58), FAR § 13.106(a) provided that purchases not over \$1,000 could be made without securing competitive quotations if the contracting officer considered the prices to be reasonable. The section now provides that purchases not exceeding 10 percent of the small purchase limitation, or \$2,500, may be made without securing competitive quotations if prices are reasonable.

suggested that the two quotations from East West were received; and the agency lost two quotations from the protester in less than 1 week, we concluded that it did not have adequate procedures in place for safeguarding quotations.

Finally, the agency argues in its request for reconsideration that East West offered alternate items in response to the RFQs, but did not submit technical data with its quotations; thus, according to the agency, it would have been required to request that East West submit technical data in order to evaluate its alternate parts. To the extent that the agency is arguing that East West's quotations were unacceptable because they were not accompanied by the requisite technical literature, this is an argument that the agency could have-- but did not--raise in its report on the original protest. We therefore will not consider it.

Our prior decision is affirmed.



Acting Comptroller General
of the United States