



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Camtech Company

File: B-252945

Date: August 5, 1993

Joseph A. Camardo, Jr., Esq., for the protester.
James E. Fender, Esq., Department of the Navy, for the agency.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly converted small business-small purchase set-aside into an unrestricted procurement where the only quotation submitted by a small business vendor substantially exceeded both the catalog prices and a large business quotation.
2. Where an agency cancels a request for quotations erroneously designated as a small business set-aside, small business vendor may not recover its quotation preparation costs since mere negligence or lack of due diligence by the agency does not provide a basis for the recovery of such costs and there is no indication of bad faith or that the agency acted arbitrarily or capriciously.
3. Request for protest costs is denied where protester fails to demonstrate how agency's alleged improper action prejudiced the protester.

DECISION

Camtech Company protests the amendment and subsequent cancellation of request for quotations (RFQ) No. N00102-93-Q-1967, issued by the Department of the Navy for precision measurement equipment to be used to repair nuclear submarines at the Portsmouth Naval Shipyard in New Hampshire. Camtech essentially argues that the agency improperly converted a small business-small purchase set-aside into an unrestricted procurement. Camtech also seeks to recover its quotation preparation and protest costs on the ground that the agency failed to dissolve the small business restriction until after the solicitation's closing date.

We deny the protest and the request for costs.

BACKGROUND

The Portsmouth Naval Shipyard performs overhaul repair operations on nuclear submarines. In late December of 1992, the Shipyard's technical activity notified the contracting officer that it required several precision measurement equipment gauges in order to refurbish the machining on the U.S.S. Augusta nuclear submarine hatches.

As a general rule, the Competition in Contracting Act of 1984 (CICA) requires contracting agencies to obtain full and open competition through the use of competitive procedures when conducting a procurement for property or services. 10 U.S.C. § 2304(a)(1)(A) (1988). However, with respect to procurements that under current law will not exceed \$25,000, CICA authorizes the use of simplified small purchase procedures that will promote efficiency and economy in contracting. 10 U.S.C. § 2304(g) (1988 and Supp. IV 1992). These procedures, set forth at Federal Acquisition Regulation (FAR) Part 13, provide for abbreviated competition requirements. Mas-Hamilton Group, Inc., 72 Comp. Gen. 6 (1992), 92-2 CPD ¶ 259. All small purchases are to be reserved exclusively for small business concerns, unless the contracting agency determines that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns. See FAR § 13.105(a), (d)(2).

In this case, after reviewing numerous precision measurement equipment catalogs and discussing the requirement with the shipyard's Small and Disadvantaged Business Utilization Specialist (SADBUS), the contracting officer initially determined that the combination of equipment items required by the technical activity--identified as a lock ring gauge and master, a hatch lug gauge, a concentricity gauge, and a metal storage case--could be procured under a small business-small purchase set-aside since the total dollar value of these items appeared to fall well below the \$25,000 small purchase ceiling limitation, and since small business vendors had apparently provided similar types of precision measurement equipment to the shipyard in the past.

The contracting officials subsequently learned that potential suppliers of the required precision measurement equipment items would have to adapt commercially available gauges to the U.S.S. Augusta hull size by expanding the gauges' measurement reference points--requiring a pre-award site visit for all interested vendors and involving technical designs and customized modifications not otherwise encompassed in routine purchases of such equipment. As a result, the contracting officer, purchasing agent and SADBUS--by means of a memorandum dated February 1 and signed by all

three officials--decided to dissolve the small business restriction, as permitted by FAR § 13.105(d)(2),¹ since "it was not known who or what size businesses would respond or have the ability to develop the needed items." Because the required technical modifications as well as the basic equipment were believed to be relatively inexpensive, the contracting personnel concluded that the combination of required items could still be obtained for an amount "far less" than \$25,000 and that the small purchase procedures therefore were still applicable to the procurement.

Due to a heavy volume of procurements, the Portsmouth Naval Shipyard utilizes a computerized system--identified as the Automated Procurement Accounting Data Entry (APADE) program --to compile and produce each solicitation document. The APADE program is designed to automatically incorporate applicable notices and FAR and Defense FAR Supplement provisions into the final printed solicitation document based on information inserted by the document drafter in response to various program prompts. In this case, although the agency had decided not to conduct the procurement as a small business set-aside, in preparing the solicitation document, the purchasing agent inadvertently entered the wrong response in reply to the small business set-aside APADE prompt--and, as a result, the solicitation's standard form (SF) 18 cover page misidentified this procurement as a small business-small purchase set-aside.

¹FAR § 13.105(d)(2) provides:

"If the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns . . . that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis."

The February 1 memorandum memorializes the basis for the unrestricted small purchase determination in accordance with FAR § 13.105(d)(5), which provides that "[i]f the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase."

On February 8, the agency synopsisized its need for the precision measurement equipment items as an unrestricted procurement in the Commerce Business Daily (CBD); on February 24, the agency issued the RFQ--with its erroneous small business set-aside classification--to each of the 14 vendors, including Camtech, who had responded to the CBD notice.

At the March 9 site visit, only two vendors attended-- Camtech, and L.S. Starett Company, a large business. By the March 15 closing date, two quotations were received from these vendors. On March 16, Camtech telephoned the purchasing agent regarding the award results; the purchasing agent informed Camtech that quotations were received from all vendors who had attended the March 9 site visit, and that evaluation of the quotations was not yet completed. In response to this information, Camtech stated that since the only other attendee at the site visit had been a large business, and since the RFQ was a small business set-aside, the agency was required to award a purchase order to Camtech as the sole small business vendor.

Because of the large number of solicitation documents which the purchasing agent was preparing and overseeing at the time she drafted the RFQ for these items, the purchasing agent had failed to detect the RFQ's small business restriction. On March 16, as a result of her telephone conversation with Camtech, the purchasing agent reviewed the solicitation document, and "was chagrined to discover . . . that the SF 18 had been mis-marked" with a small business set-aside restriction.

That same day, the purchasing agent notified the contracting officer of the RFQ's small business set-aside misclassification; on March 18, the contracting officer issued amendment No. 0001 to the RFQ, which dissolved the small business set-aside restriction and set a new closing date of March 29. Shortly after initiating the amendment process, the contracting officer learned from the technical activity that "an unanticipated change in the critical path of the regular overhaul of the U.S.S. Augusta provided additional time to procure the specialized measuring equipment." Because this scheduling change provided more time for procuring the required items, the contracting officer decided to cancel the RFQ and issue a new solicitation; according to the contracting officer:

"I believed then, and I believe now, that it would be much better to issue a solicitation without the administrative error concerning the 'Small Business . . . Set-Aside' [classification] contained in the [the original RFQ]; to compete this small purchase as widely as possible, and to

provide more time between a site visit and the time set for receipt of offers."

On March 19, amendment No. 002 was issued canceling the procurement; on March 22, Camtech received both amendment No. 0001 and amendment No. 0002. On April 5, Camtech filed this protest.

DISCUSSION

The Protest

According to Camtech, because it was the sole small business vendor, and because it submitted an allegedly reasonable price quotation, the agency was required to issue a purchase order to Camtech under the original RFQ instead of seeking broader competition under an unrestricted procurement-- either by means of an amendment or by conducting a resolicitation. We disagree.

Under the small business-small purchase procedures, if an agency fails to receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis. FAR § 13.105(d)(3); Western Filter Corp., B-247212, May 11, 1992, 92-1 CPD ¶ 436.

In this case, the record shows that, contrary to Camtech's assertions, it did not submit a reasonable price quote. The agency reports--and our in camera review confirms--that Camtech's quoted price substantially exceeds the current market price for these items as established by the precision measurement equipment catalog price listings and the Starett quote.² See FAR § 13.106(c). While Camtech argues that it is improper to compare its price quote to that of a large business, we think the Starett quote is an appropriate measure of the current market price for these items given that Starett's price quote is in line with the precision measurement equipment catalog listings and with the agency's expectation that the dollar value of these items would be well below \$25,000. See General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256; Sigma West Corp., B-247916, July 20, 1992, 92-2 CPD ¶ 31. Camtech has offered no explanation of the basis for its price quote or otherwise explained how its offered price constitutes a reasonable reflection of the current market for these items. Accord-

²Because this requirement is being resolicited, the agency has asked us not to disclose any pricing information; the record shows that neither vendor's quotation price has been disclosed. Accordingly, our discussion of the price differentials is necessarily general.

ingly, we see no basis to conclude that the agency was required to issue a purchase order to Camtech.

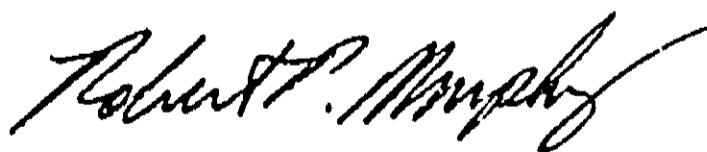
Protester's Claim for Costs

In its comments on the agency report, Camtech asserts that had it "been aware that it was competing against large businesses in this [s]olicitation or that the documentation was defective, it may not have made the requisite site visit and actively competed." As a result, Camtech seeks to recover its quotation preparation costs, and the costs of pursuing this protest.

The bid protest provisions of CICA, 31 U.S.C. § 3554(c)(1) (1988), and our implementing Regulations, 4 C.F.R. § 21.6(d) (1993), provide for the award of bid, proposal, or quotation preparation costs and protest costs where our Office determines that "a solicitation, proposed award, or award of a contract does not comply with a statute or regulation." The mistaken issuance of a defective solicitation provides no basis on which to allow the recovery of quotation preparation costs, where, as here, the agency amends or cancels the defective procurement--and there is no indication of bad faith, or that the agency acted arbitrarily or capriciously. See EAI Corp., B-252748, July 26, 1993, 93-2 CPD ¶ ____; Special Sys. Servs., Inc., B-238168, Apr. 4, 1990, 90-1 CPD ¶ 359.

Nor do we see any basis in the record to award Camtech its protest costs. The protester's statement that "it may not have . . . competed" had it known of the erroneous small business classification, does not establish that the agency's allegedly improper action prejudiced the protester. Absent a demonstration of prejudice--which is not otherwise apparent from this record--Camtech is not entitled to its protest costs. See World Access, Inc., B-245571.4, May 8, 1992, 92-1 CPD ¶ 428.

The protest and request for costs are denied.


for James F. Hinchman
General Counsel