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DECISION



P. Luberman H-2
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-191677

DATE: July 27, 1978

MATTER OF: Tagg Associates

DIGEST:

Because small purchases are made under simplified procedures and without requirement to obtain maximum competition, GAO will not consider protest concerning alleged specification improprieties in small purchase procurement absent allegation of fraud or bad faith by procuring activity, or allegation that a reasonable effort was not made to secure competition from a representative number of responsible firms.

Tagg Associates (Tagg) protests the purchase of a computer software system to be used to measure computer hardware performance at a number of Defense Logistics Agency (DLA) computer centers. Request for Quotations (RFQ) DLA 710-78-Q-0129 was issued by the Defense Construction Supply Center, under the simplified small purchase procedures set forth at Armed Services Procurement Regulation (ASPR) § 3, pt. 6 (1976 ed.).

Tagg asserts that the RFQ is deficient in two respects. First, Tagg believes that the technical specifications set out in the RFQ are written around a system marketed by Reliability Research, Inc. (Reliability). Second, Section F.2.3 of the RFQ defines the minimum required customer base against which performance of DLA equipment would be compared. Tagg contends that this requirement does not relate to system performance and serves only to restrict competition, resulting in a sole source procurement from Reliability.

DLA denies that the RFQ requirements are intended to restrict the procurement or to pre-select any vendor.

Use of specifications which are designed to permit full and free competition is required under the law applicable to formal advertisements for bids. 10 U.S.C.

§ 2305(a) (1976). The requirement in negotiated procurements to maximize competition, such as by avoiding the use of unnecessarily restrictive specifications, is applicable where the procurement exceeds \$10,000. 10 U.S.C. §§ 2304(a)(3) and (g) (1976). Accordingly, ASPR § 3-203.2 (1976 ed.) provides that: "Purchases or contracts aggregating not more than \$10,000 shall be made in accordance with Part 6 [Small Purchase and other Simplified Purchase Procedures] of this Section * * *."

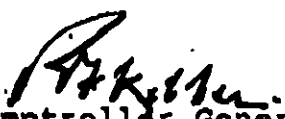
The small purchase procedure in ASPR § 3, part 6, is designed to minimize administrative costs which might otherwise equal or exceed the cost of acquiring relatively inexpensive items. A procurement founded on a contracting officer's good faith finding that the proposed award is to the best advantage of the Government, price and other factors considered, and that the price is reasonable, ordinarily is sufficient. Although the contracting officer is required to solicit quotations from a reasonable number of potential sources, this generally is done by oral solicitation. ASPR § 3-604.2(a). Moreover, we have recognized that the Government need not award the small purchase to the firm offering the lowest quotation. JCL Services, Inc., B-182994, June 16, 1975, 75-1 CPD 364. In the absence of a need to maximize competition, the regulations imply that the contracting officer may judge the advantages and disadvantages of particular products, as related to price. ASPR § 3-604.2.

We conclude that the small purchase procedure gives the contracting officer broad discretion to determine how the needs of the Government can be best met. Because it permits purchases to be made without the need to maximize competition with specifications adapted to that purpose, no useful purpose would be served by our consideration of protests concerning alleged specification improprieties in small purchase procurements. Generally we believe our review of these types of procurements should be limited to cases of fraud or intentional misconduct, or instances where it appears that the procuring activity has not made a reasonable effort to secure price quotations and

related information from a representative number of responsible firms as anticipated by ASPR § 3-600 et seq.

In this instance, DLA explains that it used the RFQ to that end by setting out its overall requirements in the RFQ. Tagg and Reliability apparently are the only firms known to offer the type of software required. Both firms were asked to submit a quotation and we find no reason for concluding that the specifications were derived in bad faith. In the circumstances, we see no basis for objection to the procedure followed.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States