

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*S. Harpurther
Proct*

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FILE: B-192578

DATE: February 5, 1979

MATTER OF: Ikard Manufacturing Company *CNG-01835*

DIGEST:

1. Record contains conflicting statements concerning whether contract specialist advised offeror that telephonic offer was late and unacceptable for award of small purchase procurement. "Telecon Quote" form completed by contract specialist after telephone conversation indicates only that late offer was received. Where doubt exists as to when protester knew or should have known of basis for protest, doubt is resolved in favor of protester. Protest is for consideration since filed timely after offeror learned of contracting officer's award to another firm and rejection of quote.
2. Under small purchase procurement, rejection of late quote (approximately 31 percent below awarded quote) cannot be considered to have been due to fraud, intentional misconduct, or failure of agency to make reasonable effort to secure adequate competition, since regulation concerning number of firms to be solicited was followed, two timely quotes were received, and some costs and effort duplicative of those already expended to award to low, timely offeror would have occurred. Protest denied even though no appreciable delay in award date would have ensued by acceptance of late offer.

AGC 00848

The United States Army Missile Materiel Readiness Command (Redstone Arsenal) issued request for quotations (RFQ) No. D1816183, on May 22, 1978, to three small business concerns, all previous producers, for the procurement of 124 support and adjustor items for the HAWK Missile System. The RFQ was issued pursuant to 10 U.S.C. § 2304 (a)(3) (1976), which permits procurement by negotiation

[Protest of Contract AWARD] # 003418

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rather than formal advertising where the aggregate amount of the purchase would not exceed \$10,000. In addition, the RFQ called for quotes in accordance with a required delivery period of 240 days. Ikard Manufacturing Company (Ikard) protests the rejection of its late quotation in response to the RFQ and award thereunder to another firm.

Two written price quotations were received by the activity on or before June 12, the date noted in the request as being the date by which price quotations had to be received, by that activity. The low price of \$29 per item (a total price of \$3,596), a price determined to be reasonable in view of the procurement history for the item, was submitted by Wego Precision Machines, Inc. (Wego). Since the original request for quotations had been issued on the basis of \$2,379.56 (calculated on the basis of a price of \$19.19 per item--a procurement in March 1978 had been made at \$19.80 per item) in obligated funds, an additional \$1,216.44 (increasing the amount of obligated funds to \$3,596) was requested on June 15 by Redstone Arsenal. This additional amount was certified by the Finance and Accounting Officer on June 19. Award was made to Wego on June 21.

On June 15, prior to the latter events, a representative of Ikard called the contract specialist assigned to the procurement and verbally submitted a unit price quote of \$20.30 and a proposed 210-day delivery schedule. The contract specialist--who accepted the quote and recorded it on a "Telecon Quote" form with the notation "Late Bid received"--apparently told the Ikard representative that the quote "was late and would be treated as such." This is the wording used in the contracting officer's June 15 determination to reject the Ikard quote as late as well as in his report on the protest. In a September 13 affidavit attached to the Headquarters, United States Army Materiel Development and Readiness Command (Headquarters), cover letter to the report, the contract specialist alleges that he told the Ikard representative that its late quote "would not be considered for award." On August 3, an Ikard representative called the Arsenal and requested the status of the procurement. After the representative was informed that an award had been made to Wego at the price of \$3,596, he noted the lower quote of Ikard. The contracting officer checked into this fact and then advised Ikard that its quote had been rejected as late.

It is the position of Headquarters that the Ikard protest is untimely and should not be considered. This is so because the contract specialist told Ikard on June 15 that the late quote would not be considered. Therefore, since Ikard knew of the basis for its protest on June 15 and did not protest to our Office until August 8, the protest was untimely filed more than 10 working days after the basis for it became known. See 4 C.F.R. § 20.2(b)(2) (1978). Alternately, it is contended that the protest should be denied since the contracting officer did not act arbitrarily in deciding not to make an award to Ikard inasmuch as he determined that consideration of the late quote would necessitate additional work and would delay the award. Thus, the contracting officer did not feel that acceptance of the Ikard late quote would be in the best interests of the Government, a right reserved in the RFQ. In making this decision, according to the initial protest report, the contracting officer also considered (1) the lateness of the quote with no request for an extension of the closing date, (2) the economic infeasibility of holding RFO's open and redoing work to accommodate late quotations, and (3) the prejudicial advantage gained by late quoters over firms submitting timely quotations.

We requested additional information concerning the amount of effort and cost that would have been required to have awarded to Ikard which would have entailed obtaining an amended procurement/work (PWD) directive. The contracting officer further advised that the contract specialist would have had to take the time to make a final review of the file and fill out a transcript sheet. Other efforts and costs involved keypunch editing, keypunch operator time, computer time, and certification by Finance and Accounting (action by 45 employees are involved for accountability and approval.) According to the contracting officer, the amended PWD for the additional funds to award to Wego was obtained by June 15, the same day Ikard's quote was received. It is the contracting officer's position that the duplication of the above effort would have substantially negated any possible \$1,078.78 savings that would have flowed from an award to Ikard. Additionally, it was considered that the delivery history of Ikard and the computation of leadtime, required for delivery by technical experts, made Ikard's early delivery unreasonable to accept.

Ikard protests the award on the basis that its quote was accepted by the contract specialist (as shown by the recorded "Telecon Quote" and the abstract of quotes) and that no mention was made of the quote being considered late or unacceptable. Ikard maintains that, on more than one occasion in the past, late quotes have been submitted by Ikard and have been accepted by the Government. It filed the protest clearly within the 10-working-day requirement. Finally, Ikard contends that its quote should have been accepted as in the best interests of the Government since the quote was approximately 31 percent lower than the Wego quoted price. Further, any alleged delay in award that would have been incurred is seen as a false issue since Ikard promised to deliver sooner (210 days) than Wego (240 days). The untimeliness of the protest is contested on the basis that no mention of lateness was made by the contracting specialist, that it is not for the contract specialist to make such a determination--rather it is for the contracting officer--and that the first time Ikard learned of the award and of the rejection of its quote was in early August when it telephoned the Arsenal to inquire of the status of the procurement.

We believe that the protest was timely filed. The parties have filed conflicting statements concerning the June 15 telephone conversation. However, the record contains the "Telecon Quote" completed contemporaneously with that conversation which indicates only that the quote would be treated as late, but not that it would be rejected. Since, based on past experience and the terms of the RFP, Ikard could believe that it still might receive award, there was no basis upon which to protest even if that advice had been given by the contracting officer. In any event, where doubt exists as to when a protester knew or should have known of the basis for protest, that doubt will be resolved in favor of the protester. Memorex Corporation, B-191037, September 27, 1978, 78-2 CPD 236. Therefore, since Ikard learned of this determination less than 10 working days before its protest was filed with our Office on August 8, it is timely filed and for consideration.

As regards the actions of the contracting officer, we observe initially that, although the amended PWD on Wego was dated June 15, the certification by Finance and Accounting was dated June 19. From this, it appears that


the obtaining of an amended PWD took 1 week from the RFQ's closing date. Two days later, award was made to Wego. Had the contracting officer begun action to award to Ikard on June 15, a portion of the effort and costs of processing an award to Ikard would have merely been substituted for, rather than duplicative of, the effort and costs that were incurred in processing the Wego award. Further, from the above timeframe for award processing, it appears that award to Ikard could have been made within a few days of the Wego award date. The contracting officer's doubts as to Ikard's ability to deliver early go to responsibility, a determination which was not reached because of the rejection of that firm's quote.

As regards small purchases, we now limit our review:

"* * * 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 [now Defense Acquisition Regulation (DAR)] § 3-600 et seq." Tagg Associates, B-191677, July 27, 1978, 78-2 CPD 76.

There is no question that a reasonable effort was made to obtain adequate competition in accordance with DAR § 3-604.2(a) (1976 ed.) by the solicitation of three firms and the receipt of two timely quotes. Also, the record is clear that some costs and effort would have been duplicated even if prompt processing of an award to Ikard had been undertaken upon receipt of the June 15 quote. Moreover, the contracting officer has broad discretion under the RFQ as to late quotations. In conclusion, we do not believe that the circumstances support a finding that the contracting officer's actions were founded upon fraud or intentional misconduct.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States