12265 TRANS

DECISION

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

FILE: B-195286 DATE: December 11, 1979

MATTER OF: Hydro Fitting Mfg. Corp. D 3477

DIGEST:

Under small purchase procedures, procurement founded on contracting officer's good faith finding that proposed award is to best advantage of Government, price and other factors considered, and that price is reasonable, ordinarily is sufficient. Government need not award small purchase to firm offering lowest quotation.

Hydro-Fitting Mfg. Corp. (Hydro) protests the award of a purchase order to another offeror under Request for Quotation (RFQ) No. DLA700-79-Q-1111. The purchase was made under the simplified small purchase procedures found in the Defense Acquisition Regulation (DAR) Section 3, part 6 (1976 ed.).

As its bases of protest Hydro alleges that the
2 Defense Construction Supply Center (DCSC) improperly 228 ?
rejected Hydro's low quotation and awarded the order to an offeror whose price was higher and whose delivery date was longer than Hydro's. (This allegation is also made with respect to earlier solicitations based on information received while this protest was pending.) In this connection Hydro accuses the DCSC of using an award check list containing a list of firms currently in a delinquent performance status on prior contracts as a blacklist. Those firms (of which Hydro is one) are allegedly automatically rejected as potential awardees regardless of price and delivery quoted. Hydro also alleges "constructive fraud" and "misconduct" on the part of the contracting officer on the grounds that the contracting officer erred in evaluating Hydro's delivery date when examining its quotation.

[Protest Against Award of Purchase Order]

111069 ~~008031~~

It is our opinion that the record does not support a finding of misconduct on the part of the procuring officials as a result of their use of the awards checklist. For example, DCSC indicates the awards checklist was developed to implement DAR 1-904.1 which requires the contracting officer to make an affirmative determination of responsibility prior to making a purchase from any firm. The checklist contains a list of firms whose past contract history with DCSC raises questions as to their ability to perform. It is based on DAR § 1-903.1 which sets forth the minimum standards for responsible prospective contractors. Deficient performance on prior contracts is one of the criteria the contracting officer is required to consider. DAR 1-903.1 (iii).

However, the award checklist does not itself relieve the contracting officer of his responsibility to make a determination of responsibility. In this respect, the agency asserts that a preaward survey of Hydro was made in accordance with DAR 1-904.1, and Hydro was found nonresponsible due primarily to its delinquent performance on prior contracts. Thus, in our view there is no evidence to support the assertion that the awards checklist results in the alleged automatic disqualification for awards and we therefore find no merit to the allegation of misconduct.

Hydro's allegation of "constructive fraud" is based simply on the contracting officer's interpretation of the delivery terms offered by that firm.

The Request for Quotation (RFQ) required delivery within 120 days, but also allowed offerors to "quote best delivery possible." Since Hydro's quote of "delivery stock as required" did not offer a specific earlier date, it was construed as offering delivery within the 120 days, specified in the RFQ, i.e., <u>as required by the RFQ</u>. Hydro disagrees with that interpretation because it claims that it <u>intended</u> its quote to mean delivery on demand from stock at hand. We find no basis to conclude that the contracting officer's interpretation of the delivery terms offered by Hydro had no reasonable basis. Most certainly that interpretation does not rise to the level of fraud.

Under small purchase procedures, 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. Therefore, the Government need not award the small purchase to the firm offering the lowest quotation. Tektronix, Inc., B-194046, May 14, 1979, 79-1 CPD 343. Here the difference in price between Hydro's quotation and the contractor awarded the order was only $33.39 for the entire contract quantity. Thus, even if Hydro had been found to be responsible, we believe the contract was properly awarded on the basis of the earlier delivery schedule quoted by the awardee, given the insignificant difference between the two lowest offers.

Finally, given the broad discretion of the contracting officer to determine how the needs of the Government can best be met, our review regarding price obtained utilizing small purchase procedures is limited to instances where the procuring agency has not made a reasonable effort to secure price quotations from a reasonable number of offerors. Custom Burglar Alarm, Inc., B-192351, January 18, 1979, 79-1 CPD 30. This Office has sustained small purchases which resulted from as few as two quotations, Custom Burglar Alarm, Inc., supra, and has permitted a contracting officer broad discretion to determine the reasonableness of prices. See International Trade Operations, Incorporated, B-192910, April 11, 1979, 79-1 CPD 253. In all of the instances Hydro has complained of relating to earlier awards under small purchase RFQs, there were at least two or as many as four offerors, with awards made to those offerors whose prices were considered to be reasonable. There is no evidence on the record to suggest that the awards were made at excessive prices.

The protest is denied.

Milton J. Socolar

For the Comptroller General
of the United States