



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Comspace Corporation

File: B-277540

Date: October 24, 1997

Irving Becker for the protester.

Ronald M. Pettit, Esq., and Jeffery Greer, Esq., Defense Logistics Agency, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency lost and therefore failed to consider an allegedly low-priced quote submitted by telefacsimile is denied where it is not certain that the quote was ever received by the agency and there is no evidence of any repeated mishandling by the agency of telefacsimile quotes.

DECISION

Comspace Corporation protests the issuance of a purchase order to Zeus Electronics under request for quotations (RFQ) No. SP0960-97-Q-1828, issued by the Department of Defense, Defense Logistics Agency (DLA) for certain digital microcircuits. The protester contends that it submitted a lower-priced quote than Zeus and, therefore, that DLA should have issued the purchase order to Comspace.

We deny the protest.

The RFQ was issued by DLA under simplified acquisition procedures using the Defense Supply Center, Columbus (DSCC) electronic bulletin board (EBB) to solicit and receive quotes. The EBB is available to any vendor which has access to a computer, possesses a valid Commercial and Government Entity (CAGE) code (which it receives after registering with the agency), and has an active password. Vendors can submit quotes in response to RFQs issued by DLA under these automated procedures via the EBB or the Internet, or by telefacsimile (fax) transmission.

The RFQ at issue, which was posted on the EBB on June 12, 1997, stated that the agency required 193 designated digital microcircuits for use in various aircraft and called for quotations to be furnished by the close of business on June 26. On June 18, the protester telephoned the agency and requested that the contract specialist send the firm a hard copy of the RFQ. On that same date, the contract

specialist requested that the DSCC distribution office mail a copy of the solicitation to Comspace. The agency received two quotes by the close of business on June 26, including a quote from Zeus, but did not receive a quote from the protester. The agency issued a purchase order to Zeus, whose quote was low, on July 3.

The protester contends that it submitted a quote for the solicited part number at a lower price than Zeus quoted.¹ Comspace alleges that although it requested a hard copy of the RFQ on four occasions, it never received the solicitation. The protester states that the contract specialist advised the vendor to submit the quote on company letterhead, and it claims to have sent its quotation by fax machine to the contract specialist's attention on the morning of June 26. To establish this transmission, Comspace has furnished a copy of what it states is its transmitted quote on which there appears a handwritten notation reading "[s]ent 6/26/97 8:41 AM." The protester claims that this is the fourth or fifth instance where DLA has advised Comspace of non-receipt of one of its offers and argues that its protest should be sustained because "[i]f, in fact, faxed documents are not being handled by the agency properly, this action is not the fault or negligence of this contractor."

As noted above, DSCC states that it never received Comspace's quotation, and the agency has submitted an affidavit to our Office from the cognizant contract specialist in which she states that she did not receive a quotation from Comspace before either the June 26 requested date or the July 3 order date. The agency has also provided a copy of its agency source list for this microcircuit on which Comspace is listed as a source and, next to its name, is a handwritten notation reading "copy sent 18 June 97 in phone request by buyer."

Our Office conducted a telephone hearing with the parties during which the protester's president stated that, while Comspace's fax machine may have the capability to generate a real-time confirmation of outgoing fax transmissions,² the protester does not use this option. Rather, it is Comspace's standard practice to make a handwritten notation, indicating the date and time of outgoing fax transmittals on the transmittal after it has been faxed. In this case, as noted above, a Comspace representative wrote a date and time on its copy of the quote. Comspace's president also stated that the company's fax machine maintains an internal log or status report of transmissions, and is capable of storing a record of up to 30 transmittals. At our request, Comspace submitted a copy of this status report to our Office. The report shows that there was an outgoing transmission to

¹Zeus quoted a unit price of \$29 (\$5,597 for the total order); Comspace asserts that it submitted a quote at a unit price of \$21.95 (\$4,236.35 for the total order).

²We note that many fax machines have the capability of generating, shortly after an outgoing transmission, a real-time confirmation of the transmission, including (among other things) a reduced copy of the first page of faxed materials.

DSCC's fax number for the RFQ on June 26 at 8:38 a.m. Comspace also submitted, at our request, a copy of its telephone bill, which shows a call to the DSCC fax number given in the solicitation at 8:40:55 a.m. on June 26.

In response to our questions concerning the basis for Comspace's allegation that DSCC had previously lost four or five of its faxed submissions, the protester pointed to three previous protests filed with our Office. One protest (Comspace Corp., B-277541, Aug. 20, 1997), which was withdrawn by Comspace, did not concern an allegedly lost submission and another (Comspace Corp., B-277742, Oct. 9, 1997) involved the alleged loss of a quote sent via express mail, not by fax, and was dismissed because Comspace failed to comment on the agency report. In the third protest (Comspace Corp., B-277306, Aug. 7, 1997), the agency had issued a purchase order to another vendor, but when, during the pendency of the protest, it discovered that Comspace had submitted a timely quote via the EBB, it took corrective action. Thus, Comspace has not presented any evidence which supports its allegation that DSCC has lost or mishandled other of its faxed quotations.

Offerors and quoters have a duty to see that their offers and quotes, and any modifications to them, reach the designated government office on time. Federal Acquisition Regulation § 15.412(b); see Southern CAD/CAM, 71 Comp. Gen. 78, 79-80 (1991), 91-2 CPD ¶ 453 at 3. Offerors and quoters using fax transmission to file documents assume the risk of nonreceipt by the agency. Southern CAD/CAM, supra.

While Comspace's protest submissions show that the protester did fax something to DSCC on June 26, the record does not establish either the content of this submission or receipt of the transmission by DSCC. Evidence of fax transmission does not, of itself, establish receipt. This is especially so where contracting officials deny receipt and there is no conclusive contemporaneous evidence of receipt. Southern CAD/CAM, supra. Here, there is no independent evidence, apart from the protester's own assertion, that the transmission was a quote or, assuming it was a quote, that it was in fact identical to the copy that Comspace submitted to our Office with its protest. Further, notwithstanding its allegation, the evidence submitted by the protester does not show any pattern of repeated instances of lost or mishandled faxed quotes on the part of the agency.

Agencies do have an obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations actually received and to give them fair consideration. East West Research Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147 at 4; aff'd, Defense Logistics Agency--Recon., B-239565.2, B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298 at 2-3. However, we recognize that an agency occasionally will lose or misplace a bid or quotation, especially where, as here, the procuring activity is responsible for a high volume of small purchase buys, Advanced Seal Tech., Inc., B-254667, Dec. 30, 1993, 94-1 CPD ¶ 4 at 2. Thus, even if

DSCC received Comspace's quote and subsequently lost or misplaced it, while this would be unfortunate, the one-time negligent loss of a quotation by an agency would not entitle the quoter to any relief. Id.

Under this EBB procurement, facsimile transmissions are a secondary means of submitting quotes and, here, the record shows that one facsimile machine was denoted for receipt of quotes and this machine was monitored by a designated clerk whose desk is located next to the machine, and who routinely delivers quotes to the addressees on a daily basis. Nothing in the record suggests a pattern of loss of faxed quotes by the agency or that normal procedures were not followed on the day Comspace allegedly transmitted its quote, and there is no basis to conclude that the agency improperly failed to consider Comspace's quote.

The protest is denied.

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