



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-280980

Date: December 14, 1998

James P. Rome, Esq., for the protester.

Walter R. Pierce, Esq., Defense Logistics Agency, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to consider quotation allegedly sent by facsimile is denied where the record does not show that the agency received the quotation.

DECISION

Advanced Seal Technology, Inc. (AST) protests the issuance of a purchase order to Quality Control Corporation (QCC) under request for quotations (RFQ) No. SPO760-98-Q-1478, issued by the Defense Logistics Agency for seal assemblies. AST contends that it submitted the low-priced quotation in response to the solicitation.

We deny the protest.

On July 7, 1998, the agency issued the RFQ for spring-loaded shaft seal assemblies, with a list of three approved sources and their corresponding part numbers. A synopsis prepared for the Commerce Business Daily (CBD) identified the buyer, with her telephone and facsimile numbers. The RFQ itself listed a different facsimile number in the address box for the contracting activity, the Defense Supply Center, Columbus (DSCC).

On September 2, the protester contacted the agency regarding the status of the procurement and was told that DSCC intended to issue a purchase order to QCC at a price of \$950 per unit. The protester asked the agency what had happened to its quotation, which, it asserted, was lower in price. After a review of the file, the

buyer advised AST that it had no record of receiving a quotation from AST. This protest followed.

AST has submitted affidavits from its president stating that, on August 6, it sent a quotation to one of the buyer's facsimile numbers¹ and that, on August 14, it sent an amended quotation, for an increased quantity, to the facsimile number for DSCC listed in the RFQ. AST has provided no record of having sent the facsimile quote other than a copy of its telephone bill for August, which lists a call to the DSCC facsimile number on August 14.

At the request of our Office, DSCC provided information on its procedures for handling and safeguarding quotations. According to DSCC, procurement personnel have access to two "floor model" facsimile machines and an electronic facsimile system called "FACSys," which is integrated into the DSCC computer system. Affidavit of James W. Patterson, exhibit A to agency letter dated Oct. 23, 1998 at 1 (Patterson affidavit). Buyers and clerks are responsible for sorting documents received by the floor machines into trays for the appropriate buying unit, for later delivery; no log of incoming correspondence is maintained. With regard to FACSys, 25 to 30 buyers share the same telephone number, and transmissions to that number are displayed on the screen of each buyer's personal computer. Buyers are responsible for retrieving FACSys information from their computer screens; sometimes a clerk retrieves the information by printing a copy for delivery to the buyer. In all cases, a hard copy of each quote is printed, after which the electronic correspondence is deleted. Id. FACSys does create a record of incoming transmissions. Affidavit of Carolyn M. Warren, exhibit B to agency letter dated Oct. 23, 1998 at 1.

While AST asserts that it sent its amended quotation to the buyer's FACSys number on August 14, the FACSys log of incoming calls shows only one call on August 14 from an unidentified telephone number in AST's 815 area code, and it is to an extension different from any of those listed in the RFQ or the CBD synopsis. Thus, apart from the protester's own sworn statement, the only evidence that AST

¹There is a discrepancy in AST's account regarding the number to which the August 6 quotation was submitted; in his August 4 affidavit, AST's president states that the transmission was sent to extension 4387, while in its October 19 comments on the agency report, AST states that it was sent to extension 4360.

submitted a quotation is the entry on AST's August telephone bill, which shows a call to the FACSys number on August 14.

Firms submitting quotations have a duty to see that their quotations reach the designated government office on time. Southern CAD/CAM, B-244745, Nov. 13, 1991, 91-2 CPD ¶ 453. In particular, quoters using facsimile transmissions to file documents assume the risk of nonreceipt by the agency. See, e.g., Huntington Valley Indus., B-274303, Nov. 29, 1996, 96-2 CPD ¶ 206 at 3. Here, the record does not establish receipt of AST's quotation by the agency. The sole evidence that the quotation was transmitted is the August 14 entry on AST's telephone bill; however, the contracting agency denies receipt of any such transmission, an assertion supported by the absence of any indication in the FACSys log of receipt of any transmission from AST that day. Given the absence of evidence documenting receipt, we have no basis to conclude that the quotation, if sent, in fact was received. Huntington Valley Indus., *supra*; Advanced Seal Tech., Inc., B-254667, Dec. 30, 1993, 94-1 CPD ¶ 4 at 2.

Even assuming that AST did submit a quotation, which DSCC somehow mishandled, there is no basis for allowing the protester to resubmit its quotation, since there is no certainty that the copy here, which AST submitted to our Office after award, is in fact identical to the original. Displacing an otherwise successful competitor on the basis of a quotation submitted well after the closing date is not consistent with maintaining the integrity of the competitive system. Advanced Seal Tech., Inc., *supra*.

It is true that agencies have a fundamental obligation to have procedures in place to receive and safeguard quotations. However, even with appropriate procedures in place, an agency occasionally will lose or misplace a bid or quotation; while this is unfortunate and agencies must have procedures to minimize the possibility of loss, the occasional negligent loss of a quotation by an agency does not entitle the quoter to any relief. *Id.* Here, AST does not allege that DSCC deliberately lost its quotation or has a history or pattern of losing such quotations, apart from the quotations here. Further, it clear from the record that the agency had adequate

procedures in place for receiving and handling facsimile quotations.² Consequently, we have no basis to question the agency's actions here.³

The protest is denied.

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²AST cites East West Research, Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, aff'd, Defense Logistics Agency--Recon., B-239565.2, B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298, to argue that the agency's alleged loss of AST's two quotations constitutes more than "occasional negligence" for which AST is entitled to relief. That case is clearly distinguishable from the protest here. In East West Research, the record showed that the agency had lost two quotations from the same firm in less than 1 week; the agency's facsimile logs showed that the quotes had been received and the agency failed to establish that it had reasonable procedures for document handling after receipt. None of those circumstances are present here. There is no evidence that the quotations were received--in fact, AST has proffered no evidence that it ever transmitted the August 6 version of its quotation--and the agency has shown that it has adequate procedures in place.

³In response to an inquiry from the agency, the supplier listed on the copy of AST's quote submitted with the protest advised the agency it did not provide a quotation to the protester. AST has alleged, as an additional ground of protest, that the agency's contacts with its potential supplier constituted an improper intrusion on its business relationship with that supplier and resulted in an improper disclosure of its price. Even assuming that the agency acted as AST asserts, there is no basis to believe that the agency's actions had any effect on the evaluation and award process for the instant solicitation. Accordingly, in this regard, AST fails to state a valid basis of protest. 4 C.F.R. § 21.5 (1998); see Custom Data Servs., B-271288.2, Oct. 9, 1996, 96-2 CPD ¶ 140 at 5 (to state a valid basis of protest, protester must demonstrate that agency's actions could have had an impact on the evaluation and selection decision).