



G A O

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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: GMA Cover Corporation

File: B-288018

Date: August 17, 2001

Marc A. King for the protester.

Walter R. Pierce, Esq., and Gail L. Booth, Esq., Defense Logistics Agency, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's failure to solicit a quote from the protester for an urgently needed item under an oral solicitation conducted under simplified acquisition procedures is unobjectionable where the contracting officer solicited the sources that she was aware had supplied the item and she was unaware of the protester's interest in submitting a quote, notwithstanding that the protester had supplied the item for another agency and had submitted quotes on prior agency simplified procedure acquisitions of the item.

DECISION

GMA Cover Corporation protests the award of purchase order No. SP0750-01-M-0990 to John Johnson Company for 120 fitted vehicular covers by the Defense Logistics Agency, Defense Supply Center, Columbus, Ohio (DSCC). GMA contends that DSCC improperly denied GMA the opportunity to compete for the order.

We deny the protest.

In April 2001, DSCC determined that it had an urgent requirement for 120 fitted vehicular covers, National Stock Number (NSN) No. 2540-01-472-5091. DSCC had no supplies on hand of the item, which is a "Level A" weapon system supporting the "Family of Medium Tactical Vehicles" critical to the protection of troops and supplies, so that accelerated award and delivery of the item were required. Contracting Officer's Report at 1; Agency Report, Tab 4, Statement of Urgency.

To identify sources for this urgent requirement, the contracting officer consulted the Haystacks System, which is a computerized database list of sources that have previously provided various NSN items to the agency. Three sources, two of which were small businesses, were listed in the system as prior suppliers of this cover. Neither GMA nor Johnson was listed in Haystacks. One of the listed sources contacted identified Johnson, a small business, as the actual manufacturer of the item it had supplied. Using the simplified acquisition procedures in Federal Acquisition Regulation (FAR) part 13, the contracting officer orally solicited quotes from Johnson and one of the small businesses listed in Haystacks, because both had previously supplied or manufactured the cover and were believed to be capable of timely delivering the item.¹ Based on the responses, award was made on May 25 to Johnson at a price of \$65,251.20. After DSCC denied GMA's agency-level protest, this protest followed.

GMA protests that DSCC improperly denied GMA the opportunity to compete by orally soliciting quotes and not publicly announcing the procurement. GMA states that it holds a contract to supply similar covers with the United States Army Tank-Automotive and Armaments Command (TACOM) and has previously submitted quotes to DSCC for the item being procured here as recently as January 2001. GMA argues that DSCC should therefore have been aware that GMA was a source for this item and researched more references than Haystacks for qualified manufacturers.

Under the Federal Acquisition Streamlining Act of 1994 (FASA), procurements conducted using simplified acquisition procedures—used to purchase supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed \$100,000—are excepted from the general requirement that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 10 U.S.C. §§ 2304(a)(1)(A), (g)(1), (g)(3) (1994 & Supp. IV 1998). These simplified procedures, implemented in FAR part 13, are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, FASA requires only that agencies obtain competition to the maximum extent practicable when they utilize simplified acquisition procedures. 10 U.S.C. § 2304(g)(3); see FAR § 13.104; Aleman & Assocs., Inc., B-287275, May 17, 2001, 2001 CPD ¶ 93 at 3. This standard is usually met if an agency solicits at least three sources. However, the competition may be limited to fewer than three, including limiting the competition to only one source reasonably capable of performing the work, and the solicitation conducted orally without public notice, if the agency's needs must be satisfied on an urgent basis. See FAR §§ 5.202(a)(2), 13.104(b), 13.106-1(a)(1)(iii), 13.106-1(b), 13.106-1(c).

¹ The other listed small business source was not solicited because of prior delinquent performance.

As discussed above, to expedite the process DSCC orally solicited only those small business firms that it believed were capable of meeting the agency's urgent requirement.² Since the simplified acquisition procedures specifically allow an agency to solicit sources to fulfill an urgent requirement on this basis, DSCC's actions complied with the regulations applicable to this circumstance. Although GMA argues that DSCC should have conducted a more comprehensive search of other resources, such as other parts lists and the Small Business Administration, DSCC did not act improperly by failing to undertake such an effort.

GMA argues that DSCC should have been aware of GMA due to its previous quotes to DSCC for this item, and correspondence from TACOM to DSCC informing the agency of the technical acceptability of GMA's covers.³ The contracting officer advises that GMA was not solicited because she was simply unaware that GMA was an acceptable source. Contracting Officer's Report at 4. There is no showing that the contracting officer was aware that GMA was interested in submitting a quote for this requirement. As admitted by GMA, the item it has supplied under the TACOM contract is not designated by the NSN applicable to this procurement, so it could not be searched for under the agency's database. Further, DSCC states that all prior purchases of the item were conducted under simplified procedures and the agency does not, and is not required to, maintain a list of prior quoters for purchases conducted under these procedures. In the absence of any evidence that the contracting officer should have been aware of GMA's desire to be solicited, such as either a specific request by GMA to compete for this order or its notifying DSCC of its desire to compete for this requirement, there is no basis to find that the agency improperly excluded GMA from the competition. See Aleman & Assocs., Inc., supra.; Gateway Cable Co., B-223157 et al., Sept. 22, 1986, 86-2 CPD ¶ 333 at 4-5.

The protest is denied.

Anthony H. Gamboa
General Counsel

² There is no merit to the protester's suggestion that the award of the order is somehow questionable because Johnson is not listed in Haystack and the agency did not initially advise the protester how it came to solicit Johnson. The agency has fully explained in the agency report how Johnson was solicited and we see nothing improper in Johnson being solicited.

³ GMA, in response to supplemental agency comments, submitted a memorandum dated May 12, 2001 from TACOM to the Commander of DSCC advising it of the technical acceptability of GMA vehicular covers to meet DSCC's requirements for covers.