

**March 14, 1997**

**P.S. Protest No. 97-03**

**WALLY'S SPECIALTY PRODUCTS, INC.**

**Purchase Order No. 052684-97-P-0431**

**DIGEST**

Protest against issuance of a purchase order for vehicle step grates is denied; protester's suspicion that its quotation was disclosed to the successful quoter is unsupported by record, which indicates that successful quoter offered its published price for the grates it proposed.

**DECISION**

Wally's Specialty Products, Inc., protests the issuance of a purchase order for anti-slip step grates by the South San Francisco Purchasing and Materials Service Center (P&MSC).<sup>1</sup>

The protest recites that Wally's was approached on January 22 concerning an order for "about 1200" step grates by a representative of the Sacramento, CA, Vehicle Maintenance Facility (VMF). Wally's provided the VMF with its pricing for the items in a series of telephone calls and written submissions.

On January 24, Wally's provided the VMF with its best price for the step grates. Also on that date, Wally's was contacted by a representative of the San Bruno P&MSC requesting information about the company in connection with a purchase of 1,139 grates.

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<sup>1</sup> A Vehicle Maintenance Bulletin in the protest file discloses that the grate is intended to fit into the step well of a postal Long Life Vehicle (LLV), and identifies Wally's and Wheeler Bros., Inc., as approved sources for the item.

On January 27, the P&MSC asked Wally's for a quote for that quantity. Wally's quoted \$45,560, or \$40 per grate, delivered, the same unit price previously provided to the VMF.

On January 28, the P&MSC advised Wally's that Wheeler Bros. had received the purchase order because it had quoted a lower price. The protest states that the P&MSC told Wally's that Wheeler Bros.' aggregate price was \$45,060; the contracting officer states that Wally's was told that Wheeler Bros.' aggregate price was \$45,195.52.<sup>2</sup>

Because Wheeler Bros.' price, as the protester understood it, was exactly \$500 less than the price the protester had quoted and was not a multiple of an even unit price (a \$45,060 aggregate price works out to a \$39.561018 unit price), the protester became concerned that its price had been disclosed to its competitor. Inquiring of the Sacramento VMF, it was informed, in the words of the protest, that "[the VMF] had ordered and received 600 of Wheeler Bros. grates and were under orders to ship them back as the cost exceeded what they are allowed to spend without asking for bids" and that returning the grates would incur a \$1,200 freight charge.

The protester concludes that someone, presumably at the VMF, disclosed its price to Wheeler Bros. to avoid having to return the improperly ordered grates, and that the \$500 difference in the prices "was just too obvious to be a coincidence." Further, the protester contends that the VMF may have sought to keep the price of the Wheeler Bros. grate down by omitting the cost of a hold-down kit,<sup>3</sup> intending to order the kits later.

The contracting officer's statement sheds light on the circumstances of the procurement. A January 22 e-mail message advised the contracting officer that the VFM had recognized that the order for the total quantity of 1139 grates which it had placed with Wheeler Bros. on January 17 under its local purchasing authority exceeded the \$10,000 limit on such purchases, and that it would be necessary to obtain competitive quotations for the units through the P&MSC.<sup>4</sup> The contracting officer describes the process under which the quotations were solicited, and notes that the price quoted by Wheeler Bros. was the same as its published price, which was the price previously quoted to the VMF when it placed its initial order.

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<sup>2</sup> A \$45,195.52 price, reflecting a \$39.68 unit price, is shown on the contracting officer's telephone solicitation worksheet for the purchase. A \$39.65 unit price is also indicated on Wheeler Bros.' published price sheet for the step insert.

<sup>3</sup> Wheeler Bros.' sales sheet identifies an "[o]ptional Hold Down Kit . . . to hold down grate/ prevents loss, deters theft" with a \$2.82 unit price.

<sup>4</sup> The file reflects that 591 grates from the initial order were invoiced to the VMF on January 21.

The contracting officer's statement includes a memorandum from the VMF which states, *inter alia*, that no one at the VMF disclosed Wally's price to Wheeler Bros., and that the VMF does not intend to purchase the optional hold-down brackets.

Wheeler Bros. has submitted comments on the protest in which it denies that it was aware of Wally's quoted price, noting that its published price, which is the price which it offered, was lower than both Wally's original quote and its revised quote. It also notes that its optional hold-down unit is not required for the proper functioning of the step grate.

## **DISCUSSION**

There is no evidence in this record that the protester's price was communicated to the successful offeror. The protester's assertion that it was arises in part from its erroneous understanding that the successful quoter reduced its price to be exactly \$500 less than Wally's price. Instead, the record indicates that Wheeler Bros.' quoted price was \$364.48 less than Wally's quoted price, reflected its published unit price for the step grates, and was the same price it initially had quoted noncompetitively to the VMF.

The record also fails to support the protester's conclusion that the VMF improperly intended to order the optional hold down clips in a separate purchase transaction. The VMF denies that intention, and the fact that the initial noncompetitive order did not include them supports the denial.

Suspicion, assumptions and innuendo are not sufficient to justify such inferences; the protester must offer specific proof of allegations of bad faith, bias or unfairness, . . . and, . . . must prove [specific intention to harm it].

*A-1 Transmission*, P.S. Protest No. 93-14, October 29, 1993. Since no such proof has been demonstrated, the protest is denied.

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