

September 15, 1998

P.S. Protest No. 98-17

ECS TECHNOLOGIES, INC.

Solicitation No. 363199-98-N-0943

DIGEST

Protest of contracting officer's failure to consider faxed quotation is denied. Possibility that missing quote was mishandled after receipt does not require relief.

DECISION

ECS Technologies, Inc., (ECS) protests the Postal Service's failure to consider its quotation in response to a request for quotations (RFQ) for Network Associate Sniffer Server upgrades and their maintenance.

On July 6, 1998, the Greensboro, NC, Purchasing and Materials Service Center sent three suppliers, including ECS, a facsimile RFQ for 25 sniffer servers and 25 two-year maintenance and technical support subscription licenses, FOB Raleigh, NC, with credit for legacy equipment. Quotes were due 2 p.m. Thursday, July 9.

The P&MSC had issued the RFQ in response to a funded requisition initiated by a Raleigh Telecommunications Specialist on June 25. The requisition had identified the three sources subsequently solicited, and gave an estimated cost of \$134,769.¹

¹ After quotations were due, ECS furnished the P&MSC with a copy of its quotation for the requirement dated June 25 addressed to the Raleigh Telecommunications Specialist in that amount. The record does not suggest that the contracting officer was aware before that time that the requisition had been based on ECS's quote.

As reflected on the contracting officer's notes of a telephone call dated July 7, Mr. Martin Howard of ECS called to inquire about the requirement. Told that the RFQ had been faxed the day before, he stated that he had not received it, and requested a second copy, which was sent. Later that day, he left a voice mail acknowledging its receipt and stating, in the words of the contracting officer's notes, "that he would prepare and transmit his proposal."²

A transmission activity report generated by ECS's facsimile machine reflects that a four-page facsimile message was successfully sent from ECS to the P&MSC's facsimile machine at 12:37 p.m. on July 7.³ ECS contends that that message was its quotation in response to the RFQ, but the contracting officer did not receive such a quotation, and her inquiries to others in the P&MSC as the result of ECS's subsequent complaints failed to discover it.

By 2 p.m. on July 9, the contracting had received quotations from the other two sources solicited,⁴ but not from ECS. The lower of the two quotations was from McBride and Associates, Inc., of Albuquerque, NM, in the amount of \$150,125. Before 3 p.m., the contracting officer secured verbal approval of the additional funds required and prepared and mailed delivery order 363199-98-N-0943 to McBride with a letter requesting its written acceptance.

Mr. Howard called the P&MSC shortly after 3 p.m. to inquire about the status of the purchase, and was told that "award was made to McBride" and that the contracting officer had not received ECS's quotation. Further, ECS was told that it could not now provide its quotation because award had already occurred.

As noted above, ECS faxed the contracting officer a copy of the quotation it had previously furnished to the Telecommunications Specialist with a cover sheet asserting that that quote had also been sent to the contracting officer "by the deadline." In a later call, ECS requested the telephone number for postal counsel, and was given the number for the Atlanta legal office serving the P&MSC.

ECS's protest was received by this office on July 10. It recites events from its perspective, and contends that the contracting officer should have inquired of ECS concerning its quotation since it had indicated that it had sent one, describing its experience that

² ECS's protest states that the telephone conversations occurred on July 8, and that the voice mail message reflected "that the facsimile for response to RFQ had been sent."

³ The activity report reflects no fax transmissions to the P&MSC on July 8, but does show the July 9 transmission which corresponds with the P&MSC's receipt of the copy of ECS's earlier quotation to the Telecommunications Specialist.

⁴ Both these quotations had been received by facsimile on July 8.

“the contracting officer has always, when a facsimile RFQ is involved, requested from the sources that had originally quoted a reason for no response from an interested party before making a final decision.”

The contracting officer states: “I only call prospective contractors when I do not receive any proposals, and then only to see why a proposal was not submitted.”

The protester did not comment on the contracting officer’s statement.

DISCUSSION

The record reflects various minor inconsistencies between the protest and the evidence which it offers, and in the accounts of the protester and the contracting officer. It appears that the protest misstates the date that Mr. Howard requested the RFQ as July 8 since that date is inconsistent both with the transmission report on which ECS relies and the contracting officer’s contemporaneous notes. Less easily resolved is whether ECS’s voice mail message reflected that the quotation *would be* transmitted or *had been* transmitted, the significance of the latter being that it might have more obviously alerted the contracting officer to a problem when the quotation failed to appear. “In addressing factual conflicts between the protester and the contracting officer, the statements of the contracting officer are accorded a ‘presumption of correctness’ which the protester must overcome.” *Caravelle Industries, Inc.*, P.S. Protest No. 93-17 November 10, 1993. Disagreement about what was said is not sufficient to overcome that presumption. *T & S Products*, P.S. Protest No. 90-06, March 9, 1990. Accordingly, we adopt the contracting officer’s account of the contents of the voice mail message.

Inherent in ECS’s protest is the contention that since it has a record of the successful facsimile transmission of its quotation, the Postal Service must have received it. That is not the case:

[Q]uoters have a duty to see that their offers and quotes . . . reach the designated government office on time. . . . [Q]uoters using fax transmission to file documents assume the risk of nonreceipt by the agency. . . . 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. . . . 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 [the protester] submitted to our Office with its protest. . . .

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. . . . However, we recognize that an agency occasionally will lose or misplace a bid or quotation Thus, even if [the agency] received [the protester’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. . . .

Comspace Corporation, Comp. Gen. Dec. B-277540, October 24, 1997, 97-2 CPD ¶ 111 (citations omitted).

Similarly, considering ECS's submission of its quotation on July 9 as a late transmission, it need not have been considered since it was received subsequent to the issuance of the purchase order to McBride. *Cf. John Blood*, Comp. Gen. Dec. B-274624, December 19, 1966, 96-2 CPD ¶ 233.

While the contracting officer's lack of curiosity about the absence of a quotation from a vendor who had specifically expressed interest in the purchase was unfortunate, and apparently resulted in the Postal Service incurring some additional expense in this purchase, it does not require a remedy.

The protest is denied.

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