



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Comspace Corporation

File: B-274037

Date: November 14, 1996

Irving Becker for the protester.

Jerry Aldridge, and Christine B. Rothe, Department of the Air Force, for the agency. Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Electronic quotation cannot be considered for award where the only evidence of receipt is agency record showing receipt by the agency after award.

DECISION

Comspace Corporation protests the rejection of its quotation as late, and the award of a purchase order to Star Dynamic Corporation, under request for quotations (RFQ) No. F41612-96-T-A998, issued by the Department of the Air Force for 32 field telephone sets.

We deny the protest.

The RFQ was issued by Sheppard Air Force Base (AFB) on July 11, 1996, using simplified acquisition procedures (initiated by the agency for purchases up to \$100,000), under which RFQs are transmitted directly to an electronic bulletin board maintained by the agency. Quotations, due no later than July 23, were to be submitted by interested firms either in paper form or electronically through a government certified value added network (VAN), which would transmit the quotation to the agency network entry point (NEP) in Columbus, Ohio. The NEP is the first electronic entry point at which the government accepts a vendor's quotation.

On July 18, Comspace submitted its quotation to Comtech Management Systems (CMS), a trading partner (*i.e.*, a firm that serves as a "middleman" for purposes of submitting electronic quotations to a VAN, *see* Federal Acquisition Regulation (FAR) § 4.501). CMS transmitted the quotation to Harbinger Corporation, a VAN. However, as of July 23, the agency had no record of a quotation from Comspace; it made award on that same date to Star Dynamic, which submitted the lower of the two quotations received. Subsequently, after being informed that Comspace had

submitted a quotation, the contracting officer investigated and found that a quotation from Comspace (lower than Star Dynamic's) was received¹, but not until 3:45 p.m. on August 1. The agency concluded that the late quotation did not warrant disturbing the award.

Comspace argues that its quotation should be deemed timely based on the fact that it was timely submitted on July 18 to a government certified VAN through its trading partner; any delay in its receipt at the Columbus NEP was not Comspace's fault but, rather, was a "government matter" that should not affect its entitlement to the award based on its low price.

When, as here, the RFQ does not contain a late quotations clause, but merely requests quotations by a certain date, that date is not considered a firm date for purposes of determining whether a quotation may form the basis for an award. A & B Trash Serv., B-250322, Jan. 22, 1993, 93-1 CPD ¶ 53. Rather, the agency is not precluded from considering a quotation received after the announced due date provided that no substantial activity has transpired in evaluating quotations, and the other firms submitting quotations would not be prejudiced. Id. Activity is deemed substantial where the agency has begun the award process prior to receiving the late quotation. Adrian Supply Co., 68 Comp. Gen. 575 (1989), 89-2 CPD ¶ 99.

Here, the only evidence in the record bearing on the time of receipt by the agency shows that Comspace's quotation was received on August 1. Comspace has submitted other evidence, but it does not show receipt by the agency before the due date, which was also the award date. For example, CMS' documents show that it transmitted Comspace's quotation to Harbinger (the VAN) on July 18, but they do not show when the quotation was transmitted by Harbinger to, or received by, the agency. Likewise, information from Harbinger indicates only that it received the transmission from CMS at 4:03 p.m. on July 18; it does not show the time Harbinger submitted the quotation to the agency or the time it was received by the agency. In fact, Harbinger specifically states in a letter to Comspace that it is unable to verify the time the quotation was actually sent to or received by the agency because "its system logs for this date/time were out of retention"; in fact, the letter further states that Harbinger is unable to offer "proof that the document was sent to the Columbus NEP." We conclude that Comspace's quotation was received after award and that, under the above standard, the agency properly declined to consider it.

¹Although the records show the time of receipt at Sheppard AFB, not at the Columbus NEP point of receipt for electronic quotations, the agency explains that there is only a minor delay (a few seconds to a few minutes) in the transmission of the information across the network to Sheppard AFB.

There is no basis to find Comspace's quotation timely--and thus in line for award--based on the time it was received by the VAN, as Comspace essentially argues. While VANs participate in the electronic quotation (and offer) submission process, they are not government entities; receipt of a quotation by a VAN therefore is not receipt by the government. See generally G&G Patrol, B-233170, Oct. 27, 1988, 88-2 CPD ¶ 401 (U.S. Postal Service is not government entity for purposes of determining time of receipt by government within meaning of late bid clause). Since, as a practical matter, an agency cannot consider a quotation before receiving it, a quotation transmitted by a VAN after award plainly cannot be considered for award.

The protest is denied.

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