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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** W K Engineering International, Inc.

**File:** B-402828

**Date:** July 30, 2010

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Jonathan R. Hickman, Esq., Negele & Associates, for the protester.  
Nicole M. Franchetti, Esq., Michael D. Delaney, Esq. and Judith Pullman Gever, Esq.,  
Defense Logistics Agency, for the agency.  
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General  
Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Under procurement for aircraft ground safety pins conducted under simplified acquisition procedures, agency properly made award for more than requested “primary quantity,” where solicitation requested prices for additional incremental quantities and indicated that award of additional quantities could be made without obtaining revised prices or conducting discussions.

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### DECISION

W K Engineering International, Inc. (WKE) of Valencia, California protests the issuance of a purchase order to QRP, Inc. of Leland, North Carolina under request for quotations (RFQ) No. SPM8EF-10-Q-0326, by the Defense Logistics Agency, Defense Supply Center Philadelphia (DSCP) for 2,400 aircraft ground safety pins.

We deny the protest.

The agency issued the RFQ on March 5, 2010, as a total small business set-aside, and provided that the agency would use simplified acquisition procedures as contained in Federal Acquisition Regulation (FAR) Part 13. The aircraft ground safety pins for which prices were solicited were described and identified by a national stock number (NSN). Regarding the quantity of aircraft safety pins being ordered, the RFQ stated the following:

**INCREMENTAL QUANTITIES:**

PRIMARY QTY 815 EA

FIRST INCREMENTAL QTY 1600 EA

SECOND INCREMENTAL QTY 2400 EA

**THE ABOVE INFORMATION REFLECTS TOTAL QUANTITIES  
FOR EACH NSN. SEE BELOW FOR INDIVIDUAL  
LINE/DESTINATION REQUIREMENTS AND PROVIDE  
PRICING ACCORDINGLY**

RFQ at 3. The RFQ also included Note 1 which stated that “[t]his was solicited with incremental quantities of 1,600 & 2,400,” in addition to the primary quantity solicited. RFQ at 2. The solicitation also provided for the submission of separate prices for primary and incremental quantities under two separate contract line item numbers (CLIN) for delivery to two different locations as follows:

CLIN 0001:

PRIMARY QUANTITY	49	EA	\$ _____
FIRST INCREMENTAL QTY	100	EA	\$ _____
SECOND INCREMENTAL QTY	150	EA	\$ _____

CLIN 0002:

PRIMARY QUANTITY	766	EA	\$ _____
FIRST INCREMENTAL QTY	1500	EA	\$ _____
SECOND INCREMENTAL QTY	2250	EA	\$ _____

RFQ at 4-6.

The solicitation also incorporated by reference Defense Logistics Acquisition Directive (DLAD) Clause 52.213-9000, Quantity Break (JUL 1999), RFQ at 12, which provides in pertinent part:

If yet lower unit prices are available for greater quantities, offerors are requested to enter the lower unit prices and quantity ranges to which such prices will apply. The Government may elect to accept such alternate quantity quotations not exceeding \$100,000 without further solicitation or discussion.

<http://www.dla.mil/j-3/j-3311/DLAD/DLADrev5.htm> (website identified in solicitation provision incorporating DLA clauses by reference, RFQ at 10). Where the quantity break clause was incorporated by reference in the RFQ, three blank lines were provided for vendors to list quantity ranges and unit prices. RFQ at 12.

The RFQ closed on March 17. Seven vendors submitted timely quotes. Three vendors, including the awardee, provided unit prices for both the primary and incremental quantities solicited. The remaining four vendors, including the protester, provided pricing for only the primary quantities. Agency Report, Tab 4, Abstract of Quotes. The contracting officer decided that a purchase of the second incremental quantity solicited in the RFQ of 2,400 units would best suit the needs of the government based on anticipated demand, stock, and backorders. Agency Report, Tab 8, Memorandum for the Record (Apr. 8, 2010). Accordingly, the contracting officer determined to award the purchase order to QRP, the vendor that submitted the lowest price for the incremental quantity of 2,400 units solicited. Id. QRP's quoted price was \$19.79 per unit for 2,400 units for a total price of \$47,496. Agency Report, Tab 5, QRP's Quotation.

Subsequently, WKE submitted an agency-level protest, in which it argued that the award to QRP was improper, given that WKE had submitted a lower-priced quote of \$16,390 to supply the primary quantity of 815 units. Agency Report, Tab 10, WKE Agency-Level Protest (Apr. 12, 2010). The agency denied WKE's agency-level protest on April 27, noting that WKE failed to quote unit pricing for the incremental quantity of 2,400 units, and that in any case WKE's price would be higher than the awardee's price based on quoted unit prices for the primary CLIN quantities. Agency Report, Tab 11, Agency Denial of WKE's Protest (Apr. 27, 2010). This protest to our Office followed.

The protester challenges the authority of the contracting officer to award the contract to QRP for quantities in excess of the primary quantities identified for the two CLINS without amending the RFP and resoliciting the quotations to obtain prices for the total incremental quantities. In this regard, WKE contends that each RFQ CLIN indicated only one quantity (that is the "primary quantity") that "DSCP intended to purchase" and that there was nothing in the solicitation that would reasonably have put WKE on notice that the contracting officer might make award based on the incremental quantity without obtaining new prices. The end result, according to WKE, was that the agency obtained a higher unit price than would be obtained if the government had resolicited the procurement for the increased quantity or "obtained a clarification of WKE's original bid." Protest at 2.

Where, as here, simplified acquisition procedures are used, contracting agencies are to use innovative approaches to the maximum extent practicable in order to award contracts in the manner that is most suitable, efficient and economical in the circumstances of the acquisition. FAR § 13.003(g), (h); see Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 2. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this

standard and exercised its discretion reasonably. Russell Enters. of N. Carolina, Inc., B-292320, July 17, 2003, 2003 CPD ¶ 134 at 3.

Here, we find that the solicitation put vendors on notice that the contracting officer might make award for the higher incremental quantities rather than just the primary quantities, without obtaining revised prices or conducting discussions. Specifically, DLAD § 52.213-9000 provided that, if lower unit prices were available for greater quantities, “the Government may elect to accept such alternate quantity quotations not exceeding \$100,000 without further solicitation or discussion.” The RFQ also specifically requested prices for the incremental quantities up to 2,400 units.<sup>1</sup> While the protester argues that it could have offered lower prices if the agency had held discussions with WKE, the agency was not required to engage in discussions with WKE for the purpose of improving the terms of its quote, especially where WKE elected not to provide prices for the incremental quantities. Under the circumstances, we find that the agency reasonably placed the order with QRP, the vendor that offered the lowest prices for the incremental quantity of 2,400 units.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>1</sup> To the extent that WKE viewed this solicitation provision or any other protest provision, as otherwise contrary to other aspects of the RFQ, any protest on that basis had to be filed prior to the time set for submission of quotations, in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2010).