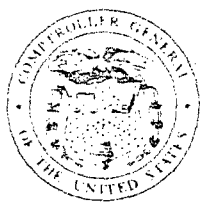


Pk 11

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

10,609

FILE: B-193817(3)

DATE: June 28, 1979

MATTER OF: Systems Engineering Laboratories

CN 600700

**DIGEST:**

1. Protest of GSA's method of awarding Automated Data Processing (ADP) Schedule contracts on basis of discount evaluation filed after protester's final offer was rejected is untimely as solicitation clearly stated that contracts would be awarded on that basis and protester was aware of GSA procedures as it held prior ADP Schedule contracts.
2. GSA's policy of requiring discounts from commercially offered prices as condition precedent for award of ADP Schedule contract is within agency discretion.
3. Where GSA indicated to prospective ADP Schedule contractor that its discount was not sufficient and prospective contractor submitted <sup>an</sup> amended offer agency did not engage in <sup>GSA did not</sup> improper auction. Auction connotes direct price bidding between two competing offerors, not price negotiation between offeror and agency.
4. <sup>x</sup> Agency projection of future sales volume based on increase in volume in year preceding negotiation is not arbitrary or unreasonable.

AB 000017

Systems Engineering Laboratories (SEL) protests the General Services Administration's (GSA) decision not to award it an Automated Data Processing (ADP) Schedule contract for computer equipment and associated communication devices. The agency declined to award a contract to SEL because it determined that the discounts offered by SEL to GSA were not as favorable as those available to SEL's commercial customers. SEL objects to GSA's decision on two levels; first

[Protest AGAINST Bid Rejection]

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SEL argues that the system of awarding contracts based on the evaluation of discounts is unfair and does not result in the Government getting the lowest price and, second, that GSA mishandled the negotiations with SEL by using an auction technique and an invalid estimate of the expected volume of orders.

For the reasons that follow we do not object to GSA's decision.

In June 1978, GSA issued solicitation No. GSC-CDDP-S-00011-N-6-12-78 to various sources requesting offers for general purpose automatic data processing equipment (ADPE) and software for the period covering October 1, 1978 through September 30, 1979.

SEL submitted an offer in response to the solicitation which included the required information regarding SEL's commercial discounting practices. This information revealed that under certain circumstances--where commercial users contractually committed to \$8 million or more volume over a two-year period--commercial customers could be granted discounts of up to 30 percent of list prices. SEL's initial offer proposed a basic discount of 15 percent plus an optional 5 percent. During discussions held on December 6 and 7 GSA advised the protester that the offer did not provide sufficient economic benefit to the Government to warrant award.

SEL submitted an amended offer on December 11 providing a 17 percent basic discount with an option for an additional 3 percent. After further discussions, SEL indicated that this was its final offer and GSA decided not to award a contract to SEL.

Those portions of SEL's protest which concern GSA's basic policy of awarding ADP Schedule contracts on the basis of a comparison of a prospective contractor's commercial discount with that offered the Government are untimely. The solicitation provides that prices will be negotiated on the basis of discounts from supplier's established catalogue or market prices, and that a contract will be awarded only when the contracting officer determines that prices and terms are

sufficiently more advantageous for the Government than the contractor's commercial selling price and terms. Further, SEL has been aware of GSA's approach to evaluating offers for such contracts as it has held Schedule contracts for ADPE since 1967. Our Bid Protest Procedures provide that protests based on alleged improprieties in a solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. 20.2(b)(1)(1978). SEL was familiar with the evaluation procedures described in the solicitation and chose not to protest their general unfairness until its offer was rejected. Therefore this portion of the protest will not be considered.

We point out, however, that GSA's policy of obtaining economic benefit from Schedule contractors through the use of discounts from commercially offered prices is within GSA's broad discretion in this area. Interdata, Incorporated, B-187455, April 22, 1977, 77-1 CPD 277; Digital Equipment Corporation, B-180833, July 2, 1974, 74-2 CPD 2. Although our recent report, Ineffective Management of GSA's Multiple Award Schedule Program-- A Costly, Serious and Longstanding Problem, PSAD-79-71, May 2, 1979, recommended that GSA make significant changes in its procedure for awarding multiple award schedule contracts, including taking into account price as well as discounts, those recommendations do not affect the legal validity of GSA's decision here not to award a contract to a firm which appeared to offer, through discounts, better prices to commercial customers than it offered to the Government.

SEL's complaints about the specific procedures used by GSA in negotiating with it are timely and will be considered.

First, SEL contends that GSA improperly conducted an auction with it by forcing it to continuously submit "blind bids against itself and some unknowable GSA standard." GSA, during discussions with SEL, did indicate that it considered SEL's discount insufficient and in response SEL submitted an additional proposal raising its discount rate. GSA again considered this rate too low and rejected SEL's offer.

This Office has held that the term "auction" connotes direct price bidding between two competing offerors (i.e., informing an offeror that its price is not low in relation to another offeror), not the negotiation of a price (or discount) between an offeror and the Government. Education Turnkey Systems, Inc., B-187534, October 5, 1977, 77-2 CPD 267. Here GSA advised SEL that its discount was not sufficient, which is equivalent to the approved procedure of indicating to offerors in negotiation for non-schedule contracts that their prices are too high. 52 Comp. Gen. 425 (1973). We see nothing improper in GSA's discussions with SEL.

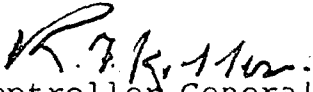
The protester objects to GSA's use in the evaluation of SEL's offer of an estimate that it would purchase over \$8 million worth of SEL equipment during the contract period. Based on this estimate, GSA apparently concluded that if it were a commercial customer it would be entitled to discounts of up to 30 percent from SEL. Accordingly, the agency determined that since SEL offered the Government a maximum discount of only 20 percent, it would not be awarded a contract.

SEL contends that the \$8 million estimate was created by the contracting officer without any price or volume analysis. The protester claims that GSA relied on a one-year increase from \$1 to \$4 million in sales to the Government to improperly make a two-year increasing sales projection of \$14 million, which the agency uses to show that its \$8 million two-year projection is reasonable. SEL argues that such an analysis, which is not based on a study of actual Government and commercial price history or on a study of future Government ADPE needs, is arbitrary and an abuse of discretion.

Although it is not clear what rationale the contracting officer used, we see nothing arbitrary or unreasonable in the agency's justification for the estimate which consists of GSA's projecting the past increase in sales volume to arrive at an estimate for future sales. Further, since SEL had reported sales of \$4,675,897 for the 12-month period preceding the negotiations, the contracting officer's projection of \$8 million in two-year sales seems reasonable. Even though SEL complains that the GSA estimate lacks

a rational basis and argues that GSA should have considered the past two-year sales volume which only totaled about \$5 million, it does not contend that the \$8 million figure is not a realistic projection of future sales volume. In these circumstances, we have no basis to question GSA's judgment in using the sales figures of the past 12 months as the justification for its future sales estimate. Nor can we conclude that the estimate itself is unreasonable.

The protest is dismissed in part and denied in part.

  
Acting Comptroller General  
of the United States