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DECISION

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

FILE: B-195116

DATE: November 20, 1979

MATTER OF: North American Laboratories - DLG02559
of Ohio, Inc.

DIGEST:

[Protest Alleging That Air Force Violated Applicable Procurement Regulations]

Where negotiations with incumbent contractor for 1-month extension of services contract had reached impasse, agency was justified in terminating negotiations and negotiating only with other sources.

North American Laboratories of Ohio, Inc.

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(NAL), protests the award of a contract to Universal Building and Maintenance, Inc. (Universal), by the Air Force for janitorial services under request for proposals (RFP) No. F33601-79-R-0220. The award was made for the month of June 1979, and the contract contained an option to extend performance to September 30, 1979. NAL contends that the Air Force violated applicable procurement regulations and failed to afford its firm, the incumbent contractor, the opportunity to participate in the negotiations.

The Air Force reports that NAL had been performing the janitorial services under a contract which included an option for the months of May and June 1979, at a firm fixed price of \$44,000 per month. The contracting officer determined that the \$44,000 price was unreasonable and attempted to negotiate a reasonable price with NAL. The Air Force states that NAL insisted that an outstanding claim under contract F33601-78-C-0056 be settled and that NAL refused to make an offer for the June 1979 services only. The contracting officer states that NAL was requested to call during the morning of May 29, 1979, if it intended to submit an offer for the month of June

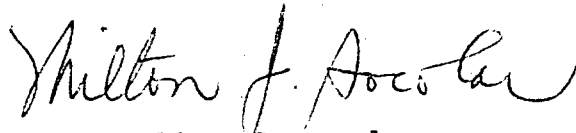
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1979 only. When NAL failed to respond with a new offer the contracting officer solicited two other firms for the requirement and made an award to the low offeror, Universal, in the amount of \$36,035.81.

Counsel for NAL states that it was not told until May 31, 1979, that its proposal for June services combined with a settlement of its claim had been rejected, and that other firms had been solicited and an award made. NAL states that in conducting competition for the requirement the contracting officer did not comply with applicable provisions of the Defense Acquisition Regulation (DAR). Counsel contends that NAL, as the incumbent contractor, should have been afforded the opportunity to compete on the same basis as the other offerors.

The regulations cited by the protester, DAR § 3-500, et seq. (1976 ed.), generally prescribe the rules applicable to negotiated procurements to insure maximum competition. We agree with NAL that under normal circumstances these regulations would have required the solicitation of an offer from NAL, as the incumbent contractor, along with the solicitation of offers from the other two sources. However, while there is some dispute as to the substance of the negotiations with NAL during the final week of May, we note from an affidavit of an NAL representative concerning the session on May 28 that the contracting officer was advised by NAL that "If the entire settlement package [contract claim and offered June price] is acceptable," NAL would be prepared to sign a contract for June on May 29. Since the record shows that the agency had previously rejected the "entire settlement package," we believe it is clear that negotiations with NAL had reached an impasse only days before the June services were required. In these circumstances, the agency's decision to negotiate only with the other sources is not subject to legal objection by our Office. Telectro-Mek, Inc., B-185892, July 26, 1976, 76-2 CPD 81.

Accordingly, the protest is denied.

A handwritten signature in cursive script, reading "Milton F. Acker". The signature is written in dark ink and is positioned above the typed name.

For the Comptroller General
of the United States