The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Marquardt Company

File: B-224289

Date: December 9, 1986

DIGEST

1. Contracting agency properly may award contract on the basis of initial proposals, without discussions, where the solicitation advises offerors of that possibility and award will be at the lowest overall cost to the government.

2. Where award properly is to be made on an initial-proposal basis, agency acted reasonably in deciding not to open negotiations based on an offeror's submission of a late price reduction several months after the initial closing date and after the expense of conducting preaward surveys of two lower-priced offerors had been incurred. Permitting an offeror to compel opening by offering a late price reduction in such circumstances would defeat the entire purpose of the late proposal rules--to alleviate confusion, assure equal treatment of all offerors, and maintain the integrity of the competitive system.

DECISION

The Marquardt Company protests the award of a fixed-price contract to Dynamic Machine Works, Inc. (Dynamic), under request for proposals (RFP) No. DAAA09-86-R-0652 issued by the Department of the Army for 25,809 M114 launch motor metal parts for the TOW missile. Marquardt alleges that the Army abused its discretion by making the award on the basis of initial proposals with knowledge that Marquardt had offered to revise its initially-offered prices downward. We deny the protest.

The RFP did not require the submission of technical proposals, and no evaluation factors other than price were stated. The Army received prices from six offerors in response to the RFP. NI Industries was the low offeror with a unit price of $130.08 FOB origin with first article testing. Dynamic's unit price offer was $136.79 FOB destination with or without first article testing and $137.79 FOB origin with or without testing. Marquardt offered $149.18 per unit FOB destination and $147.92 FOB origin, both prices on the basis of no first article testing since it had been a supplier of the items for nearly 10 years. Accompanying Marquardt's price offer was a letter stating that the firm

was reducing its price from what the government had paid in the past because Marquardt believed it would be a mistake for the government to have to rely on a new supplier.

Because of the length of time involved in conducting preaward surveys on NI Industries and Dynamics, the Army requested the offerors to extend the acceptance period of their offers by 45 days. By letter, Marquardt extended the acceptance period as requested and also offered to supply the contract items at a unit price of $129.32 FOB destination and $128.17 FOB origin. The company stated in the letter that new costing information had become available which enabled it to lower its prices.

After completing the preaward surveys, the Army found NI Industries to be nonresponsible. Consequently, the company was eliminated from further consideration for award. Dynamic, however, was found to be responsible. As to Marquardt's price reduction, the Army determined it to be a late modification to its original price proposal and thus not for consideration pursuant to clause L-8 of the RFP, "Late Submissions, Modifications and Withdrawal of Proposals." The Army then awarded the contract to Dynamic as the low offeror, on an FOB destination basis with first article testing required.

Marquardt argues that although its late price reductions could not be accepted directly by the Army, they were substantial enough to show that opening negotiations and requesting best and final price offers, rather than making an award on the basis of the offerors' initial price proposals, would prove highly beneficial to the government. Marquardt emphasizes that the unit price reductions it offered amount to an approximate $500,000 lower total price than Marquardt's original offer and roughly $193,000 lower than Dynamic's total proposed price.[1]

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[1] Marquardt, in its comments on the Army's protest report, alleges that at the same time it offered price reductions it also submitted, by separate letter, an alternative price for manufacture of the TOW missile launch motor parts using nickel steel rather than cobalt steel. Marquardt further alleges that it quoted a unit price of $125.04 for this alternative offer--an additional total savings of approximately $110,000. The Army, however, categorically denies that it received such an offer from Marquardt. In view of the Army's denial and the fact that the alternative offer was not mentioned by Marquardt in its protest letter, we consider the unit prices of $129.32 FOB destination and $128.17 FOB origin to have been the only price reduction figures the Army received from Marquardt.

Under the Competition in Contracting Act of 1984, a contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985). The RFP contained a "Contract Award" clause which specifically advised the offerors to submit their best prices and also cautioned that award might be based on initial proposals. Obviously, since NI Industries was found nonresponsible and therefore ineligible for award, the competition clearly shows that Dynamic's unit prices represented the lowest overall cost to the government. See Cerberonics, Inc., B-220910, Mar. 5, 1986, 86-1 C.P.D. ¶ 221. In this connection, we note that Dynamic's unit prices of $136.79 and $137.79 compared favorably with the unit prices of $154.44 to $163.16 that the Army had been paying Marquardt under four previous contracts awarded to the firm on a sole-source basis.

Notwithstanding the above, the question remains whether the Army should have opened negotiations and requested best and final price offers based on Marquardt's late price reductions.

We have held that an agency may, but is not automatically required to, open negotiations with all offerors where one offeror submits a late proposal modification that reduces its price. Rexroth Corp., B-220015, Nov. 1, 1985, 85-2 C.P.D. ¶ 505. The decision to open discussions in these circumstances is discretionary with the contracting agency. Discussions need not be opened unless a potentially significant proposed price reduction, or some other proposed modification, fairly indicates that negotiations would prove to be highly advantageous to the government. Timex Corp., B-197835, Oct. 10, 1980, 80-2 C.P.D. ¶ 266.

We believe that the Army's determination not to open negotiations was reasonable under the circumstances. The decision was based in significant part on the fact that Marquardt's price reduction was not offered until more than 2 months after the initial closing date and after the expense of conducting the preaward surveys on NI Industries and Dynamic already had been incurred. We see nothing objectionable in the agency's judgment that it was not in the government's interest at that point to incur the additional time and expense involved in opening negotiations. In this respect, we have recognized that an agency may properly factor the time and expense of preaward surveys into the

determination of potential savings from opening discussions. Rexroth Corp., B-220015, supra.

In any event, we do not believe that offerors generally should be permitted to disrupt unilaterally, and thereby postpone, an orderly procurement procedure by offering late price reductions. This would defeat the entire purpose of the late proposal provisions in government solicitations--to alleviate confusion, to assure equal treatment of all offerors, and to maintain the integrity of the competitive system. Timex Corp., B-197835, supra. In this regard, we are also concerned with the possibility that an offeror might be lowering its price because it knows that it is not in line for the award. See Rexroth Corp., B-220015, supra. While there is no substantive evidence in the record that indicates that Marquardt knew specifically, prior to making its price reductions, that Dynamic was the low offeror, we note that the Army suggests Marquardt might have learned from the preaward survey activity that it was not in line for award. While offerors cannot be prevented from legitimately drawing their own conclusions as to who is in line for award, no offeror is entitled to compel a reopening of a competition simply because it has correctly decided that it is not in line and needs to lower its prices to improve its competitive position. Id.

Marquardt's protest is denied.

Harry R. Van Cleve
General Counsel