



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Microcom Corporation
File: B-225140.2
Date: March 18, 1987

DIGEST

Contracting agency did not abuse its discretion in proceeding with award on an initial proposal basis to the low offeror, even though the second low offeror reduced its initial proposal price below that of the low offeror when reviving its proposal at the request of the agency. Agency was not required to conduct discussions upon receipt of the lower price in view of the relatively small monetary savings, the uncertainty that discussions would result in lower prices, and the agency's legitimate interest in making a timely award.

DECISION

Microcom Corporation protests the award of a contract on an initial proposal basis to Aydin Vector, under request for proposals (RFP) No. N60530-86-R-0233, for telemetry sections for use in guided missiles. The protester contends that the agency erred in rejecting its price reduction tendered with the revival of its offer, which had been requested by the agency, without conducting discussions.

The protest is denied.

The RFP provided that award would be made to the low responsible offeror. The protester and Aydin Vector submitted technically acceptable proposals at \$982,926 and \$981,353, respectively. During preaward surveys conducted on the competitors, the 60-day acceptance period lapsed. The agency orally requested that the offerors revive the offers. Both offerors did so, but Microcom, in reviving its offer, reduced its price to \$959,565. The agency rejected the price reduction as a late proposal modification. Aydin Vector was awarded the contract on the basis of its initial proposal.

Microcom contends that the agency's oral request for offer revival was accompanied by a request that its proposal be updated, in essence, a request for a best and final offer

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(BAFO). Having received Microcom's price reduction, the protester argues that the agency was obligated to open discussions with it and Aydin Vector, rather than summarily reject the price reduction. Microcom cites the Competition in Contracting Act (CICA) 10 U.S.C. § 2305(b)(4) (1985), implemented by the Federal Acquisition Regulation (FAR) 48 C.F.R. § 15-610(a) (1986), as precluding award on an initial proposal basis where the agency receives a viable lower price.

The agency and Aydin Vector acknowledge that Microcom had the right to condition the revival of its lapsed offer on a price reduction. However, it is argued that this did not obligate the agency to open discussions where the initial proposals demonstrated that full and open competition was obtained and that award would be at the lowest overall cost at a fair and reasonable price. 10 U.S.C. § 2305(b)(4), supra. Contrary to Microcom's perception of the oral request for revival, the agency states that it was never its intention to request BAFO's. In support, the agency points out that the oral requests for revival took place prior to the completion of the preaward surveys being conducted due to the offerors' prior performance history, and that Aydin Vector did not misinterpret the revival request. The agency contends that the price reduction is minimal, that there is no assurance that the government will achieve a lower price than the initial Aydin Vector price during discussions, and that the government has a legitimate interest in proceeding timely with an award.

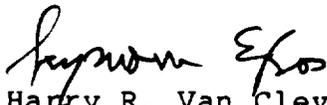
We conclude that the agency properly made an award on an initial proposal basis. Microcom does not argue that the request for revival of an offer alone constitutes discussions. Despite the dispute over the substance of the oral request for revival, the record shows that the agency never intended to request BAFO's, an intention which is inconsistent with the uncompleted preaward surveys. Moreover, we fail to understand how Microcom could have reasonably concluded that such was the case given the fact that FAR, 48 C.F.R. § 15.611 (1986), requires that oral requests for BAFO's be confirmed in writing. Therefore, we cannot view Microcom's price reduction as a viable BAFO in response to the agency's revival request as discussions. As a result, the agency properly viewed the reduction as a late modification. Having so concluded, we must decide whether the agency was required to open negotiations with the offerors. CICA prohibits agencies from accepting an initial proposal that is not the lowest considering only cost and cost-related factors listed in the RFP where there would be at least one lower-priced proposal in the competitive

range. Hall-Kimbrell Environmental Services, Inc., B-224521, Feb. 19, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ ____. Thus, in that case, the agency violated this CICA restriction by failing to conduct discussions with the technically acceptable offerors lower-priced than the firm to which the agency proposed to award the contract based on initial proposals.

By comparison, in Microphor, Inc., B-224264, Feb. 11, 1987, 87-1 CPD ¶ ____, we upheld an agency's award on an initial proposal basis despite an unsolicited late price reduction by the second low offeror 5 weeks after the receipt of initial proposals. We recognized there may be circumstances where an offered price reduction so closely follows the receipt of initial offers and would confer such a substantial benefit to the government that it would be tantamount to an abuse of discretion not to ask for BAFO's in order to take advantage of it. In reaching our conclusion, we took into account other circumstances against which an unsolicited, late price reduction, which is what is involved here, must be balanced: the magnitude of the reduction and the likelihood that opening discussions will result in a price lower than that of the initial low proposal, and the government's interest in the timely acquisition of its requirements.

We agree with the agency that a 2.2 percent price reduction on an almost \$1 million contract is not a substantial benefit to the government. In Microphor Inc., B-224264, supra, the late price reduction was over 7 percent. Further, there is no assurance that discussions would result in an award price below that of Aydin Vector's initial proposal price. In this regard, during discussions, changes to any portion of a proposal can be made, which conceivably could increase the price. Also, there already had been substantial award delay resulting from the lengthy preaward survey process, and a protest filed by the protester following a negative preaward survey recommendation. Because of the latter, the agency reasonably expected an appeal by the protester to the Small Business Administration for a Certificate of Competency. In these circumstances, we find no abuse of discretion in the agency's award to Aydin Vector on an initial proposal basis.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel