The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

Matter of: Cubic Corporation--Request for Reconsideration

File: B-228026.2

Date: February 22, 1988

## DIGEST

1. Where breakdown of prices for base and option year quantities was required to determine whether an offer was so extremely front-loaded as to be materially unbalanced, request for breakdown constituted discussions.

2. Despite revelation that awardee's price was disclosed to its competitors, General Accounting Office declines to modify its recommendation that another round of best and final offers be solicited since the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action.

## DECISION

Cubic Corporation requests reconsideration of our decision, Keystone Engineering Co., B-228026, Nov. 5, 1987, 87-2 CPD ¶ 449, in which we sustained in part Keystone's protest of the Air Force's award to Cubic of a contract for the repair and update of roll gimbal units under request for proposals No. F04606-86-R-1484. We found that the contracting officer had reopened discussions with Cubic after receipt of best and final offers by requesting a price breakdown from it; we concluded that reopening discussions with Cubic without reopening discussions with Keystone was improper and recommended that negotiations be reopened with both offerors. Cubic argues that our decision was erroneous as a matter of law since the request for a price breakdown did not constitute discussions. In the alternative, Cubic contends that the relief that we recommended is inappropriate. We deny the request for reconsideration.

In our prior decision, we held that the contracting officer's request for a breakdown of prices for the base and option year quantities constituted discussions since this information was required to ascertain that Cubic's offer was

not materially unbalanced. Cubic argues that a price breakdown was not required to determine the acceptability of its offer since the Air Force intends to exercise all of the options. According to Cubic, mathematical unbalancing of offers justifies rejection only where the agency is not reasonably sure that the options will be exercised.

First, since by its nature an option may not be exercised, we think that an offer to be acceptable must show the portion of its price which is attributed to the base year and those portions which are to be charged for the various option years. Moreover, we disagree with Cubic's assertion that a mathematically unbalanced offer may be rejected as materially unbalanced only where the agency is not reasonably certain that it will exercise the options. For a long time, our material unbalancing analysis was limited to determining whether the government reasonably expected to exercise the options; more recently, however, in cases involving extreme front-loading, where the mathematically unbalanced bid does not become low until the end of the final option year, we have recognized that even if the government initially intends to exercise the options, intervening events could cause the contract not to run its full term, thereby resulting in inordinately high cost to the government and a windfall to the contractor. Professional Waste Systems, Inc., et al., B-228934, et al., Nov. 10, 1987, 67 Comp. Gen. ___, 87-2 CPD ¶ 477. In such circumstances, we have held that there is reasonable doubt that the mathematically unbalanced bid will ultimately result in the lowest cost to the government; we have therefore found the bid to be materially unbalanced. Id. Although, as Cubic points out, we have up to now applied this rule only in cases involving sealed bids, we see no reason that the same analysis should not apply in cases like the one here involving negotiated procurements where award is made on the bases of price. We therefore affirm our prior holding that it was necessary for the contracting officer to obtain Cubic's price breakdown in order to determine whether its offer was acceptable and that the request for a price breakdown therefore constituted discussions.

Cubic next argues that even if our decision was legally correct, the remedy that we recommended--reopening discussions followed by an additional round of best and final offers--is inappropriate. Cubic points out that, contrary to our original understanding, its price was in fact disclosed to Keystone; it argues that another round of offers will therefore result in an auction. Cubic contends that the harm to the competitive process that an auction would engender outweighs the seriousness of the deficiency in the procurement process.

We disagree and therefore decline to modify our recommendation. While Cubic attempts to diminish the significance of the defect in this case by arguing that our decision was based on a mere "hypothetical possibility" that Cubic's offer was materially unbalanced, Cubic ignores the fact that the Air Force's decision to allow only Cubic to amend its proposal violated the explicit statutory requirement to hold discussions equally with all offerors in the competitive range. See 10 U.S.C. § 2305(b)(4)(B) (Supp. III 1985). In our view, under these circumstances, the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action, which in this case means a reopening of discussions. Sperry Corp., B-222317, July 9, 1986, 65 Comp. Gen. ___, 86-2 CPD ¶ 48.

Cubic also points out that performance was suspended 13 working days after contract award, rather than 8 working days as we stated in our original decision. Cubic contends that it expended a substantial amount of effort to accomplish the administrative tasks associated with program start-up during this time period. Cubic does not argue, however, that the extent of performance was so substantial as to render termination not practicable, nor does the Air Force advance such an argument. We are therefore unpersuaded that our recommendation for another round of best and final offers and, if circumstances warrant, termination of Cubic's contract is inappropriate.

The request for reconsideration is denied.

James F. Hinchman
General Counsel