



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dresser Industries, Inc.

File: B-227904

Date: September 11, 1987

DIGEST

1. Under a negotiated procurement with award to be made to the lowest priced technically acceptable offer, where, after disclosing prices but before formally awarding a contract, the procuring agency discovers that because of its error in calculating the total price of one of the offerors, the designated awardee was not actually the low offeror, recalculation and award to the low offeror is proper.
2. The Federal Acquisition Regulation's requirement for the integrity of unit prices is not violated by an offer containing an alleged disproportionately low cost for unit labor charges where the solicitation does not require that unit labor charges be separately priced and the alleged violation has not been shown to have prejudiced the protester.

DECISION

Dresser Industries, Inc., protests the award of a contract to Precision Dynamics, Inc., under request for proposals (RFP) No. N00102-87-R-0001, issued by the Navy for the refurbishment of submarine auxiliary sea water pumps and motors. Dresser asserts that after the submission of initial proposals the Navy improperly conducted discussions with Precision only, which permitted Precision to lower its nonconforming offer by claiming a mistake, thereby displacing Dresser's offer. Dresser also contends that even if the alleged mistake occurred as claimed, Precision's offer violates the Federal Acquisition Regulation (FAR) requirement for the integrity of unit prices. 48 C.F.R. § 52.215-26 (1986).

We find the protest without merit.

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The crux of Dresser's protest concerns the fact that Precision's proposal included prices for solicitation items 6 and 7 which call for planned replacement parts for items 1, 2, 3 and 4, and which state that the prices for these parts are "to be included in the unit prices of items 1, 2, 3 and 4." Items 1 through 4 call for the refurbishment of various specified pumps and motors, including the replacement of parts. Items 6 and 7 were apparently included in the RFP to distinguish between "planned replacement parts," for which prices were to be included, and "unplanned replacement parts and parts repair," which are referenced under item 8, and for which prices were not to be included but were "to be negotiated."

The RFP called for a fixed price, indefinite quantity award to the lowest priced technically acceptable offeror. By the April 27, 1987, closing date, five offers were received, all of which the Navy determined were technically acceptable. Precision had placed unit and total price entries next to items 6 and 7, as well as entering unit and total prices for items 1 through 4. None of the other offerors entered any prices under items 6 and 7. When the Navy contract specialist evaluated the offers, she totalled all of Precision's price entries, resulting in an evaluated price of \$178,678.85. Dresser's evaluated offer of \$155,980 was determined to be low and Precision's offer was next low. On June 12, the Navy informally advised Dresser and Precision that Dresser had submitted the low evaluated offer and was in line for award. At this time, prices were disclosed, whereupon Precision stated that it had submitted a lower offer than Dresser's and that it would submit an explanatory letter to that effect.

The Navy then reviewed the proposals and determined that the Precision offer had been miscalculated and was, in fact, \$128,870. The miscalculation was the result of the Navy's adding Precision's prices for items 6 and 7, which had already been included under items 1 through 4, in accordance with the RFP terms. In its explanatory letter, Precision states that it had been specifically advised by Navy personnel to include prices for items 6 and 7 for informational purposes only, even though these prices were included in Precision's prices for items 1 through 4. Upon determining its error and recalculating the offers, the Navy awarded the contract to Precision as the low technically acceptable offeror and Dresser protested to our Office.

Dresser alleges that Precision's pricing did not conform to a material RFP requirement and, as a result, Precision's offer was ambiguous at best. We disagree. The RFP makes it clear that prices entered for items 1 through 4 include the planned replacement parts referenced by items 6 and 7. Contrary to Dresser's allegation, neither the language of these line items nor any other language contained in the RFP precludes the entry of informational prices under items 6 and 7. The only reasonable interpretation of the language of items 6 and 7 is that such entries only constitute a duplication of part of the prices which are entered under items 1 through 4. We find that Precision did not violate any RFP requirement by entering the prices in question, and it is readily apparent that these prices are intended for informational purposes only. Under these circumstances, once the Navy realized that it was basing its intended award on a mistake in calculations, it was clear that the proposed award would be improper. Since the award was to be on the basis of low price and the prices had been disclosed, the government's strong interest in the preservation of the integrity of the competitive procurement system required the action taken here by the Navy, that is, the award to Precision, unless there were substantial and convincing reasons why it was not in the best interest of the government to do so. United Building Service, 63 Comp. Gen. 168 (1984), 84-1 C.P.D. ¶ 70. Dresser's argument is, in essence, that Precision was not entitled to the award because its offer format--the inclusion of informational prices which were not required under the RFP--caused the Navy's error in addition; however, nothing in the RFP precluded the inclusion, and we do not see how Precision can be charged with the Navy's error. United Building Service, 63 Comp. Gen 168, supra.

Dresser further argues that the correction was improper because it was based on prohibited discussions with only one of the offerors. We disagree. While Precision communicated with the Navy to point out that the Navy had made an error and submitted an explanatory letter, this constituted no more than confirmation of information that was already entirely clear from the face of Precision's proposal.

Under appropriate circumstances, an award may be made, as here, on the basis of initial proposals following, if necessary, discussions conducted for the purpose of minor clarification. 10 U.S.C. §§ 2305(b)(4)(A)(ii), 2305(b)(4)(C) (Supp. III 1985). The FAR states that clarification means communication with an offeror for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in a proposal. 48 C.F.R. § 15.607. The contact between Precision and the Navy was only clarification and never rose to the level of

discussions, as argued by Dresser. Further, the mistake which was made was the Navy's error in addition, not Precision's price entry.

Finally, Dresser contends that if one accepts the argument that Precision's prices for items 1 through 4 included the prices noted under items 6 and 7, then Precision violated the integrity of unit price requirement (FAR, 48 C.F.R. § 52-215-26(a)) incorporated by reference in the RFP. This provision requires that proposals for items of supplies distribute costs within contracts on a basis that ensures that unit prices are in proportion to the item's base costs and, therefore, prohibits methods of distributing costs to line items that distort unit prices. Dresser contends that if one calculates the unit costs which Precision included under items 1 through 4 for labor by deducting the unit amounts which Precision entered for planned replacement parts under items 6 and 7, then the amount which Precision's offer includes for labor costs is disproportionately low with respect to the actual unit labor costs.

We find this argument without merit, even if Precision's indicated unit labor costs, as derived by this calculation, are below actual labor costs. The FAR requirement is inapplicable to labor costs here because these labor costs are not line items under the RFP, they are not required to be priced and, therefore, they do not constitute unit prices.

In any event, we have interpreted the FAR clause in question to be analogous to the requirement for level pricing in a bid, and we have found that the violation per se of such a provision is not dispositive; the only relevant question is whether such a deviation was prejudicial to other bidders or offerors. Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 C.P.D. ¶ 321. Dresser has alleged only a violation of the requirement and has made no attempt to demonstrate how Precision's pricing of its labor could have resulted in its obtaining any unfair competitive advantage, or could have been prejudicial to other offerors. Nor is such a result apparent to us in these circumstances. Accordingly, we find the deviation, if any, without significance. See Id.

The protest is denied.


Harry R. Van Cleve
General Counsel