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DECISION



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

FILE: R-215579 **DATE:** December 26, 1984
MATTER OF: M. S. Ginn Company

DIGEST:

Protest that the rejection of an offer under a Multiple Award Federal Supply Schedule solicitation was arbitrary is denied where the record indicates that the evaluation of the offer was reasonable under the applicable standards established by General Services Administration.

M.S. Ginn Company (Ginn) protests the rejection of its offer for visual record equipment under General Services Administration (GSA) request for proposals No. FNP-C4-1433-N. This negotiated solicitation was for multiple-award Federal Supply Schedule (FSS) contracts. We deny the protest.

General Services Administration Procurement Regulations (GSPR) provide that the evaluation and award of FSS contracts shall be in accordance with the normal procedures governing formal advertising and negotiation. See GSPR, 41 C.F.R. § 5A-73301 (1984). Further, the GSA Office of Policy Formulation has issued a "Policy Statement on Multiple Award Schedule" (Oct. 1, 1982) to provide guidance in this area.

For evaluating offers from regular dealers such as Ginn, the GSA policy requires the dealer to disclose the discount it receives from the manufacturer. The contracting officer compares that discount to the discount offered the government, analyzing the spread between the government discount and dealer discount and taking into consideration the services the dealer performs and the expenses he incurs in selling to the government. Under the GSA policy statement, the contracting officer is expected to obtain a discount "equal to or better than an offeror's discounts to its most favored customer." Although the contracting officer may find in his discretion that this negotiation objective cannot be met, he is always required to make an affirmative determination that

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the prices negotiated are fair and reasonable. See the Federal Acquisition Regulation, § 15.802, 48 Fed. Reg. 42,102, 42206 (1983) (to be codified at 48 C.F.R. § 15.802).

In this case, Ginn indicated in its offer that it received a discount of 40 percent from the manufacturer's commercial price list, and in turn offered the government a 26 percent discount off list price for sales up to \$2500. In practical terms, this means that an item with a retail price of \$100 would be purchased from the manufacturer for \$60 and sold to the government for \$74. The \$14 difference in price represents a 23.3 percent markup by Ginn.

The contracting officer reviewed Ginn's "dealer functions letter," which outlined the services which Ginn would perform in selling the products to the government, to determine whether the 23.3 percent mark up was justified. Applying the criteria established for evaluating dealers' offers to the dealer functions Ginn had described, the contracting officer found the variance to be excessive. The agency noted, in particular, that these products are commonly shipped directly from the manufacturer to the end user; the dealer, therefore, would not incur warehousing, shipping or handling expenses for these items. Attempts to negotiate terms acceptable to both parties were unsuccessful, and GSA rejected Ginn's offer.

The protester argues that it has successfully offered the government a 26 percent discount in the past, and that its processing costs preclude offering any higher discount. Ginn further argues that its offer meets the standard of being as favorable as any discount offered to the contractors' most favored customer.

We find these arguments unpersuasive. The agency's acceptance of a 26 percent discount in the past is irrelevant to the evaluation of the present offer. Each contract award is a separate transaction, and an agency is not required to accept an offer simply because a previous offer with similar terms was considered acceptable under a different set of circumstances. See Medical Services Consultants, Inc.; MSH Development Services, Inc., B-203998, et al., May 25, 1982, 82-1 CPD ¶ 493.

Regarding the "most favored customer" standard, we note from Ginn's proposal that the protester does not offer any discounts to any of its customers. While it is apparent that Ginn, therefore, has met this particular criterion, it does not follow that its offer is necessarily reasonable. In this connection, we note that other offerors have been able to provide the discounts required by GSA.

We have held that a determination concerning price reasonableness is a matter of administrative discretion which we will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Introl Corp; Forster Enterprises, B-209096, et al., June 2, 1983, 83-1 CPD ¶ 633. While the protester alleges in this case that the agency has imposed an arbitrary and capricious limit on the percentage of profit which the offeror may receive, we find no evidence supporting this claim. Rather, the offered discount was analyzed and judged according to the services which the dealer would provide and costs he would incur in supplying the required goods under the standards established in the GSA Multiple Award Schedule Procurement Policy Statement.


Moreover, the Administrator of GSA is vested by statute with the authority and responsibility for determining policy and methods of procurement and supply of personal property and nonpersonal services. 40 U.S.C. § 481 (1982). Accordingly, we find no basis to substitute our judgment for that of the Administrator in determining GSA's policy regarding acceptable discount levels. See B-163971, May 21, 1969.

After reviewing the protester's offer and the GSA's evaluation of it, we are not persuaded that the rejection of Ginn's offer was capricious or arbitrary. In the absence of any evidence that the contracting officer acted unreasonably, or that the agency policy is contrary to law or otherwise detrimental to the interests of the government, we have no basis upon which to sustain the protest.

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The protest is denied.

for 
Comptroller General
of the United States