## HUB AEROSPACE

***Review this case carefully and answer the questions at the end of the case in detail.***

Hub Aerospace, Inc. was awarded a fixed-price-incentive contract for jet aircraft engines. The engines were assembled by Hub from components furnished by subcontractors. Hub had received competitive bids on all their components, which they had compiled, to come up with the bid price. Included in a number of these components was one termed a "chamber." Hub's make-or-buy study in the pre-contract phase had concluded with the decision to buy 70 chambers from one of its subcontractors.

Mr. Brosky, the contracting officer, had reduced the target price by $58,751 pursuant to the clause on price reductions for defective cost or pricing data. His decision to take this action was based on information furnished him by the GAO, who found in their post-award audit under PL 87-653 that Hub had failed to disclose price quotations submitted by a subcontractor, Steele Tube and Pipe Company, in competition for the chambers. This subcontractor's quotation of 1 February 19X0 to Hub had been a unit price of $16,211. Hub's proposal to the government was based on the unit price of $17,000 submitted by the Weller Steel Tube Company. The difference between these two vendor prices of $789, adjusted by contract pricing arrangement of 75/25, G&A and profit was the basis of Mr. Brosky's price adjustment.

Also at issue is a substantial increase in the amount of price reduction based on another undisclosed quotation of $15,451, 3 June 19X0. This quotation was submitted by Steele after the prime contract negotiations were completed and after Hub had executed its certificate of current pricing but before signing the prime contract. Hub then awarded the subcontract to Steele at the reduced price.

The circumstances preceding award of the government's contract to Hub Aerospace, Inc. were substantially as follows:

> The number of chambers to be purchased or to be made in-house under the make-or-buy program was uncertain. Changes were made in the program and in the quantities to be quoted on by the subcontractors. In January 19X0, the range of prices per unit for chambers was as follows:

| Quantity | Steele | Weller |
|---|---|---|
| 76 | $18,463.51 | $19,283.00 |
| 102 | 18,278.90 | 18,835.00 |
| 128 | 18,186.59 | 18,486.00 |
| 154 | 18,094.29 | 18,228.00 |
| 180 | 17,909.68 | 17,990.00 |

On 6 February 19X0, Weller's oral quotation for 144 units was given: $16,866 for deliv beginning in November. On 7 February 19X0, Steele's written quotation for delivery in J 19X0 was submitted as follows:

| Quantity | Price Each Lot Of |
|---|---|
| 144 | $16,142.58 |
| 120 | 16,179.85 |
| 96 | 16,211.12 |

"The above prices are based on uninterrupted production at rates shown above commencing July 19X0."

The delivery conditions imposed by Steele made their quotations nonresponsive, s Hub's RFQ called for delivery in November, not July. Hub's subcontracting Negotia Memorandum showed an attempt to have Steele eliminate that condition, and their stater they would give some consideration to the effect on pricing if they complied with the deli schedule. The Memorandum contained no evidence to show that when Hub submitte proposal to the Government in March 19X0, or before conclusions of the negotiations in M that Steele had eliminated its delivery condition. On the basis of delivery, Hub accepted Wel quotation of $16,866 adjusted to $17,000 because of program changes from 144 to 136.

The government's Negotiation Memorandum reflected a close and cooperative relatior between Hub and the government personnel. The cost analyst could have learned of quotation differences by asking for access to the chambers' procurement records. government representatives were familiar with both Steele and Weller and when a make-or decision arose they would be logical subcontracting sources. In relying on the cost and pr data, the government was satisfied with the Weller $17,000 price. However, it had been pr practice when loser prices were known to attempt to secure a lower overall price. This happened with other contractors.

The Negotiation Memorandum also showed concessions by both parties. Each had a its position several times on target cost, profit, share-ratio, and ceiling price. As f negotiated, Hub's target cost had been reduced from $12,859 to $9,735, and there had adjustments of profit percentages from the original position of each party. As they finally incorporated in the contract, target costs had been arrived at on a total cost approach.

When Mr. Peterson, Hub's President, met with the contracting officer to discuss the reduction, he was aware of Clause 51 of his contract, providing for a price reduction w contract has: ". . . furnished incomplete or inaccurate cost or pricing data or data not curr certified in the contractor's Certificate of Current Cost or Pricing Data . . ." On the other ha was convinced that his firm had not violated either the letter, or the spirit of PL 87-653. Af exchange of greetings, Mr. Peterson introduced Mr. Blackstone, his attorney, to Mr. Brosk counselor was quick to "get down to the case at hand" presenting to the contracting offic company's position that:

> Hub does not object to the minor adjustments or the method of adjusting the contract amount, i.e., reducing the contract price by the target cost and target profi attributable to a nondisclosure. Hub objects to any adjustment being made and on the

theory, that in the total cost negotiations in this case, the target cost would have been reduced by the entire amount of the difference between the Steele and Weller quotations.

Hub contends that no price adjustment is due because of its failure to disclose Steele's $15,451 price, quoted in June 19X0. Because that quotation was neither solicited nor received until after the 7 May 19X0 date of certificate of current pricing and until after the prime contract price had been negotiated.

Hub further objects on various grounds to the government's entitlement to adjustments, as included in Mr. Brosky's decision, contending:

(1) Steele's quotation of 1 February 19X0 was not cost or pricing data as of 7 May 19X0 because it was conditioned on an unacceptable delivery schedule, had a 30-day acceptance limitation, and was at that time neither responsive nor current.

(2) The quotation was in fact disclosed to the government prior to or in connection with the contract price negotiations.

(3) If there was a nondisclosure, the government has failed to prove that it caused an overstatement in the contract price. That is, the government did not rely on Weller's $17,000 quotation or on the alleged absence of the Steele quotation. In addition to other evidence, the government's conduct in asserting no such claim when chargeable with knowledge of the facts shows its lack of reliance, its construction of the contract and, perhaps, a waiver of the right to a price adjustment.

**QUESTIONS:**

1. ***Evaluate <u>each</u> of Hub's contentions. Do you agree or disagree? Why?***

2. ***What should Mr. Brosky do now?***