



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hewitt, Olson Capital Recovery Group, Inc.

File: B-261856

Date: November 7, 1995

Richard O. Duvall, Esq., and Bruce E. Kasold, Esq., Holland & Knight, for the protester.

Michael J. Farley, Esq., Department of Housing and Urban Development, for the agency.

Wm. David Hasfurther, Esq., John Van Schaik, Esq., and Michael R. Golden, Esq. Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where protester fails to show that the awardee's bid contained understated prices, no showing has been made that the bid is unbalanced, and the award is proper.

DECISION

Hewitt, Olson Capital Recovery Group, Inc. protests the award of a contract to Palm Beach Realty Services, Inc. under invitation for bids (IFB) No. DU204-B-95-0014, issued by the Department of Housing and Urban Development (HUD) for exclusive listing broker services. Hewitt Olson contends that Palm Beach improperly submitted multiple bids on the IFB and that the bid accepted for award should have been rejected since it is unbalanced. It also questions the IFB's bid evaluation method.

We deny the protest.

The IFB covered broker services for single family properties owned by or in the custody of HUD in Palm Beach and Martin Counties, Florida. Bidders were to submit four prices: (1) a percentage of the gross sales price per property payable for selling a property--the percentage was to be converted to a dollar amount for evaluation purposes by multiplying it by \$52,000, the average gross sales price realized by HUD; (2) a monthly price per property for custodial duties required for certain properties; (3) a dollar charge for properties unsold as of the expiration or termination of the contract; and (4) a monthly dollar charge for lawn services per property. Bids were to be evaluated by giving these prices weights of 60 percent, 15 percent, 15 percent, and 10 percent, respectively, in determining each bidder's total evaluated price for award purposes.

HUD received 39 bids. Of these, 12 were determined to be nonresponsive. Palm Beach submitted 17 bids, 9 of which were determined to be nonresponsive because of extremely low sales commissions and/or unreasonably high lawn maintenance prices. Two of Palm Beach's bids were determined low (\$915.80) and second low (\$960.80). Hewitt Olson's bid of (\$1,032.41) was third low. The remaining bids ranged from \$1,254.50 to \$8,149.00. Award was made to Palm Beach on June 16.

Hewitt Olson first argues that all of Palm Beach's bids should have been rejected because Palm Beach, as a single entity, submitted multiple bids which, according to the protester, had no legitimate business purpose and were, by increasing Palm Beach's chances over other bidders of being the low bidder, prejudicial to the other bidders. We have stated that multiple bidding by more than one commonly owned or commonly controlled company, or the same entity, is not objectionable if it does not give the bidder an unfair advantage that is prejudicial to the interests of the government or other bidders. Fiber-Lam, Inc., 69 Comp. Gen. 364 (1990), 90-1 CPD ¶ 351; see also Atlantic Richfield Co., 61 Comp. Gen. 121 (1981), 81-2 CPD ¶ 453 (prejudice found where awardee was to be selected by lottery, so submission of multiple bids unfairly increased chances for award). Although the protester argues that Palm Beach increased its odds of receiving award by submitting multiple bids, since award was to be made to the bidder submitting the lowest evaluated price, all offerors had the same opportunity to submit the lowest bid, and we do not see how other bidders were prejudiced. See Pioneer Recovery Sys., Inc., B-214700; B-214878, Nov. 13, 1984, 84-2 CPD ¶ 520. In other words, if the protester, instead of Palm Beach, had submitted the low bid, it would have received the award no matter how many bids Palm Beach submitted.

Hewitt Olson also questions the propriety of the IFB evaluation scheme. However, alleged discrepancies in an IFB which are apparent prior to bid opening must be filed prior to the bid opening time in order to be timely. 4 C.F.R. § 21.2(a)(1) (1995). In view of the clearly expressed evaluation scheme, Hewitt Olson was under an obligation to raise any doubts that it might have regarding the propriety of the scheme prior to bid opening. This aspect of its protest therefore is untimely.

The remaining question is whether the bids submitted by Palm Beach that are lower than Hewitt Olson's were unbalanced. To be rejected as unbalanced, an offer must be both mathematically and materially unbalanced. Solid Waste Servs., Inc., B-248200.4, Nov. 9, 1992, 92-2 CPD ¶ 327. A bid is mathematically unbalanced when it contains understated prices for some items and overstated prices for other items. Hampton Rds. Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486. Only after a bid has been found to be mathematically unbalanced does one reach the question of whether it is also materially unbalanced, *i.e.*, whether its mathematical unbalance is such that there is a reasonable doubt that the bid will result in the lowest overall cost to the government. Id. We are unable to conclude that Palm Beach's low bid both understated and overstated prices.

Hewitt Olson argues that because Palm Beach submitted an overstated lawn service price of \$110, compared to the pre-bid opening agency estimate for this work of \$53, and an understated broker fee of 2.9 percent, compared to the agency's estimate of 6.0 percent, Palm Beach's bid was mathematically unbalanced. Also, according to the protester, using the work estimates in the IFB, rather than the allegedly less reliable IFB evaluation scheme, a comparison of the cost to the agency under Palm Beach's and Hewitt Olson's bids shows that Hewitt Olson's bid would save the government more than \$3,000 a year. Under the circumstances, Hewitt Olson argues, Palm Beach's bid was clearly mathematically and materially unbalanced and should have been rejected.

Even were we to assume that Palm Beach's lawn service price was overstated (although the contracting officer reconsidered her original estimate of \$53 for the work and changed it to \$117 after bid opening), we cannot conclude that Palm Beach's broker fee was understated. Hewitt Olson argues that Palm Beach's fee was understated because 2.9 percent is less than half of the agency's estimate of 6.0 percent. However, Hewitt Olson's own broker fee bid is only 3.289 percent, which is only slightly more than half of the government estimate and only slightly higher than Palm Beach's bid. Hewitt Olson does not state whether it considers its own fee to be understated, but presumably it believes it to be reasonable.

The protester also argues that Palm Beach's fee is understated because it fails to cover the contracting officer's estimate of the broker's costs, after traditional co-broker and agency fees are paid. For instance, accepting the contracting officer's \$450 estimate of the contractor's out-of-pocket expenses per house, per year, Hewitt Olson argues that after the \$1,508 commission (\$52,000 times 2.9 percent) is split equally with a co-broker (\$754 each) and the \$754 co-broker commission is split equally with the agent, the remaining \$377 falls \$73 short of the contracting officer's \$450 per house estimated cost. However, subjecting Hewitt Olson's fee to the same analysis shows that its own commission of \$1,710.28 leaves a sum of \$427.57, which also is below the \$450 estimated cost. Accordingly, we conclude that Palm Beach's bid does not contain understated prices; consequently, it is not mathematically (or materially) unbalanced.

The protest is denied.

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