



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Allstate Van and Storage, Inc.

File: B-270744

Date: April 17, 1996

Michael J. Radford, Esq., for the protester.

Steven P. McDonald, Esq., Luce, Forward, Hamilton & Scripps, for Pack and Crate Services, Inc., the intervenor.

Jeffrey A. Mansfield, Esq., Department of the Navy, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that awardee's offer is materially unbalanced and violates solicitation's Integrity of Unit Prices clause is denied where there is no basis in record to conclude that awardee's price is mathematically unbalanced.

DECISION

Allstate Van and Storage, Inc. protests the award of a contract to Pack & Crate Services, Inc. (P&C) under request for proposals (RFP) No. N00244-96-D-5009, issued by the Department of the Navy for residential packing and moving services for military families located in the San Diego, California area. Allstate contends that P&C's offer is both mathematically and materially unbalanced.

We deny the protest.

The RFP was issued to 11 offerors on September 5, 1995, and contemplated the award of a firm fixed price, indefinite delivery requirements contract to the lowest priced offeror for the 1996 calendar year. For their proposals, offerors were required to complete and submit the solicitation's pricing schedule which solicited unit prices on a per net hundred weight basis (NCWT) for 13 types of outbound moving and storage services--identified in the pricing schedule with 13 contract line item numbers (CLIN).

By the October 31, 1995 closing date, proposals were received from Allstate, P&C, and a third offeror. In early December, 1995, the Navy awarded the contract to P&C as the lowest-priced offeror. On December 14, Allstate, the second low offeror, filed this protest at our Office.

Allstate contends that P&C's offer is materially unbalanced and violates the RFP's Integrity of Unit Prices clause, see Federal Acquisition Regulation § 52.215-26, because P&C understated its proposed prices for CLIN No. 0001, Complete Outbound Services, and offered inflated prices for CLIN No. 0003, Overflow Outbound Services. CLIN No. 0001 requires the contractor to survey and pack a service member's household furnishings and belongings into government-provided 196 cubic foot standard shipping containers and ship the goods to the appropriate outbound destination. Under CLIN No. 0003, any oversize articles that will not fit into the standard containers (e.g., motorcycles, oversize sofas), as well as items requiring a smaller container (overflow articles or fragile items), are to be transported by the contractor to the contractor's local facility for special packing in a contractor-provided container and then reunited with the remaining CLIN 0001 containers for shipment to the appropriate outbound destination.

P&C proposed a unit price of \$7 per NCWT for CLIN No. 0001 and \$110 per NCWT for CLIN No. 0003. Allstate contends that the pricing disparity between these two CLINs demonstrates that P&C's offer is mathematically unbalanced, and in violation of the Integrity of Unit Prices clause, because, according to the protester, the costs of performing these services are essentially identical.¹ Allstate further argues that this mathematical unbalancing renders P&C's offer materially unbalanced because of inherent fluctuations in the level of required services for these CLINs. Allstate maintains that performance levels from selected prior years show that services performed under CLIN No. 0001 routinely have been lower than stated solicitation estimates, while services performed under CLIN No. 0003 routinely have been higher than stated solicitation estimates. Allstate does not dispute the accuracy of the current solicitation's stated estimates; the protester admits that given the uncertainty of military moving needs, there is no better method for calculating the RFP's estimates than relying on the prior year's actual delivery order quantities--which the agency has done in this case. However, relying on our decision in Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248, wherein this Office upheld a contracting officer's rejection of a bid on a requirements contract as materially unbalanced due to inherent fluctuations in the level of the procured services (collection and survey of pine cones), and citing Beldon Roofing & Remodeling Co., B-253199, B-253199.2, Aug. 18, 1993, 93-2 CPD ¶ 103 (roofing estimates subject to

¹Allstate also challenged several other CLIN prices in P&C's offer which it has since abandoned.

fluctuation according to storm damage or previously undetected roof deterioration) and Custom Envtl. Serv., Inc., B-252538, July 7, 1993, 93-2 CPD ¶ 7 (lawn maintenance estimates subject to fluctuation according to seasonal changes affecting grass growth), Allstate argues that the agency was required to factor potential quantity fluctuations into its price analysis here. According to Allstate, had the Navy done so, it would recognize that P&C's mathematically unbalanced pricing would not result in the lowest priced offer to the government in the event that actual needs exceed the current CLIN No. 0003 estimate.

An offer that is mathematically and materially unbalanced may not be accepted for award. Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. In determining whether an offer is impermissibly unbalanced, the proposal must first be shown to be mathematically unbalanced, which involves the assessment of whether each element of the pricing schedule carries its share of the costs of the work plus profit or whether the pricing is based on nominal prices for some work and enhanced prices for other work. Outer Limb, Inc., *supra*. Next, the offer must be materially unbalanced; that is, there must be a reasonable doubt that award to the offeror submitting a mathematically unbalanced offer will result in the lowest cost to the government. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126. Our analysis of alleged violations of the Integrity of Unit Prices clause--which requires that offerors distribute costs within contracts on a basis that ensures that unit prices are in proportion to actual costs and prohibits methods of distributing costs to line items that distort unit prices--is similar; to succeed in a protest of alleged violations of this provision, the protester must establish both that the violations exist, and that the protester was prejudiced by the improper pricing methods. Allstate Van and Storage, Inc., B-238320, Apr. 26, 1990, 90-1 CPD ¶ 431.

With regard to estimated quantities in requirements contracts, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimate of the agency's anticipated needs, since the unbalanced offer will only become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced items. *Id.* However, where contractors are on notice of the inherent unpredictability of a particular type of estimate--either by virtue of incumbency or experience in the field--any concerns regarding the accuracy of the government estimate, including how it will be factored into the final evaluation analysis, must be raised prior to the time for receipt of proposals, in accordance with our timeliness rules. *See* Bid Protest Regulations, Section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)). This requirement is intended to provide parties with a fair opportunity to present their cases, and to enable the contracting agency to take effective corrective action when it is most practicable and where circumstances warrant. Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465.

While Allstate correctly points out that a contracting agency may factor potential fluctuations into its pricing analysis, see Outer Limb, Inc., *supra*, this is not required where, as here, the agency has no basis for forming more reliable or accurate estimates. Allstate admits that the agency's use of last year's delivery orders is the most reliable basis for calculating the current solicitation quantity estimates; to the extent the protester contends that selected fluctuation ratios from prior contract years should be part of the agency's pricing analysis under the current solicitation, its protest is untimely as Allstate clearly was on notice of the inherent unpredictability in the needed levels of these services, and knew from the face of the solicitation that no fluctuation ratios were intended to be applied in the pricing evaluation. To be timely, the protester should have raised this concern with the agency prior to the closing time; since it did not, Allstate cannot now argue that these ratios should be applied. Allstate Van & Storage, Inc., B-247463, *supra*.

Further, we do not agree that the pricing disparity in P&C's offer between CLIN Nos. 0001 and 0003 either renders the offer mathematically unbalanced, or otherwise violates the Integrity of Unit Prices provision. First, contrary to Allstate's argument, we are persuaded by the agency and the intervenor that the services required by these two CLINS are not essentially identical, and reasonably could involve separate costs. The record shows that typically, oversize and overflow articles are high-priced, valuable goods. As such, the risk involved in damaging these items is frequently higher than for CLIN No. 0001 items. According to the agency, and as confirmed by the awardee's pricing methodology, the additional special handling, packaging, and shipping involved in dealing with overflow and/or oversize articles under CLIN 0003 reasonably can require a more expensive packaging and moving approach by the contractor because of additional costs necessary to minimize the risk of damage to the items.

Additionally, unlike CLIN No. 0001--where the government provides the standard 196 cubic foot containers--CLIN No. 0003 requires the contractor to provide its own container for oversize and overflow goods--which the record shows typically requires constructing a specialized crate at a cost of approximately \$125 per container. Next, the packaged oversize/overflow articles must be reunited with the rest of the packaged CLIN No. 0001 freight and prepared for shipment--again, usually requiring special handling--at the contractor's cost. In this regard, packing and moving CLIN No. 0003 items frequently delays completing corresponding work on CLIN No. 0001 items. Given the additional time, work, special handling, and delays typically presented by CLIN No. 0003 items, we think it is reasonable for the

agency--and the contractor--to conclude that these services are going to be more costly.²

To the extent Allstate contends that P&C's prices for CLIN No. 0001 are nominal and its prices for CLIN No. 0003 are overstated, the record similarly does not support this contention. All parties--including the protester--admit that there are numerous ways to price packaging and moving services, and that a difference in contractors' technical approach may correspondingly raise and lower various performance costs. In this case, P&C has presented a detailed breakdown of its \$7 per NCWT unit price for CLIN No. 0001; P&C has pointed out that since it is also the contractor for performing inbound services for military personnel moving into the San Diego area, it expects to perform routine packing and moving services under CLIN No. 0001 at a reduced price since it already has a truck and labor force performing inbound services in the same area.³ With regard to its \$110 unit price for CLIN 0003, P&C has provided this Office with an itemized breakdown of this unit price--which reflects the awardee's position that a higher premium constitutes a reasonable market price in light of the special handling, packaging, and transportation costs associated with this CLIN.

Finally, the record shows that P&C's offered prices for these two CLINs have been compared with, and are consistent with, competitive awards made for similar services in other contracting regions, including Lemoore, California and Corpus Christi, Texas.

Under these circumstances, we conclude that P&C's offer is not mathematically unbalanced or in violation of the Integrity of Unit Prices clause.

The protest is denied.

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² We note that Allstate's offered unit price for CLIN No. 0003 is twice that of its CLIN No. 0001 unit price.

³The record shows that the contracting officer performed a detailed preaward survey which concluded that P&C is a responsible contractor.