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DECISION



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

[Protest Alleging Proposed Awardee's Bid Was Unbalanced]

FILE: B-198925

DATE: October 17, 1980

MATTER OF: Inland Service Corporation

DIGEST:

1. Protest against including prices for option years in bid evaluation is dismissed as untimely since intent to include option prices was apparent from face of solicitation and protest was not filed prior to bid opening.
2. Protest contending competitors's bid of \$104,000 per month for first line item requiring refuse collection and "Free" for other line items for related services should be rejected as nonresponsive is denied since unbalanced bid was not materially unbalanced and no reasonable doubt exists that bid acceptance will not result in lowest ultimate cost to Government.
3. Contention that statute requires bidders to provide prices for each schedule line item supported by different appropriation is unfounded since statute merely requires appropriated funds to be used for purpose intended and does not prohibit agency from apportioning contract price between two appropriations in amounts reasonably related to value of services rendered under each. Moreover, 31 U.S.C. § 628(a) permits agency to charge one appropriation for benefit of another provided final adjustment is made before close of fiscal year.

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Inland Service Corporation (Inland) protests award of a contract to anyone other than itself under invitation for bids (IFB) No. DAKF48-80-B-0027 issued by the Contracting Division, Fort Hood, Texas (Army). The solicitation invited bids for furnishing all facilities, labor and equipment for refuse collection and disposal for one year plus two additional option periods. The solicitation, as amended, provided that bids would be evaluated by adding the total price of all option quantities to the total price for the base year quantities. It further provided that any bid which was materially unbalanced as to prices for the basic and option quantities may be rejected as non-responsive. Inland contends A.J. Fowler Corporation (Fowler), the apparent low and only other bidder, submitted an unbalanced bid which should be rejected. Inland requests that the Army be instructed to exclude option prices from its evaluation and to consider only the first 4 of 59 line items in its evaluation. For reasons discussed below, this protest is dismissed in part and denied in part.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b) (1980), require that protests based upon alleged improprieties which are apparent prior to bid opening must be filed prior to bid opening. The solicitation here clearly indicated the option prices would be added to the base period prices for purposes of bid evaluation and that all line items would be included in the evaluation. As Inland's protest was not received by our Office until after bid opening, its contentions with respect to the impropriety of including the option prices and all line items in the evaluations are untimely and will not be considered on their merits. The protest with respect to these matters is therefore dismissed.

We will, however, consider Inland's contention that Fowler's bid should have been rejected as nonresponsive because it is unbalanced. In this regard, Inland points out that Fowler bid \$104,000 per month for line item 1 requiring refuse collection and disposal at Fort Hood and "Free" for line items 2 through 18 requiring similar or related services at North Fort Hood, South Fort Hood and family housing areas and such related services as providing

and maintaining refuse containers and a land fill. With respect to each option period, Fowler also bid \$104,000 per month for the primary item and "Free" for the similar services in other areas and related services.

Inland insists that all line items for which Fowler bid "Free" are obviously understated as to costs and that those items for which Fowler bid "\$104,000 per month" are overstated. Inland contends the bid is therefore unbalanced and makes it impossible for the Government to conform to 31 U.S.C. § 499 (1976) by properly charging the two appropriations supporting these services -- one for family housing and the other for "Organization and Maintenance, Army."

Fowler contends its bid is not unbalanced as to prices for the basic and option periods and therefore is not prohibited by the solicitation provision which states:

"Any bid which is materially unbalanced as to prices for the basic and option quantities may be rejected as nonresponsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work."

The provision quoted above provides a basis for rejecting as nonresponsive a bid which is materially unbalanced and it defines what an unbalanced bid is. It does not, however, provide a basis for rejecting an unbalanced bid as contrasted with a materially unbalanced bid. Unbalancing can exist between prices bid for the base year and the option years, among prices bid for line items for the same year, or both. Aside from construction contracts, unbalanced bidding can also arise in supply and service contracts involving several line items and options where there is a reasonable possibility that one or more of the line items for the base year or options for future years may not be ordered or may be discontinued by a partial termination. See Radiology Services of Tidewater, B-194264, June 18, 1979, 79-1 CPD 432 involving unbalancing among lines items in same year; Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107 involving unbalancing

between base and option year prices for trash collection; and Chemical Technology, Inc., B-187940, February 22, 1977, 77-1 CPD 126 involving unbalancing among alternative items for same year for kitchen police services.

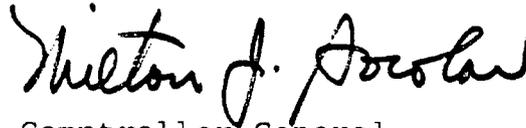
In this case, as Fowler bid identical prices for the base and option years, there is no unbalancing, material or otherwise, between the base and option years. See Refre and Associates, B-196097, April 25, 1980, 80-1 CPD 298. With respect to the line items for each year, it is clear that Fowler's bid is mathematically unbalanced because one line item carries its full costs and the cost for the other 17 line items which will be provided is "Free." However, the fact that a bid may be unbalanced does not alone render it nonresponsive. 49 Comp. Gen. 335, 343 (1969). A bid must be materially unbalanced before it can be rejected as unbalanced.

The determination as to whether a mathematically unbalanced bid is materially unbalanced requires an assessment of the cost impact of the unbalancing. A bid is not materially unbalanced unless there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Mobilease Corporation, 54 Comp. Gen. 242 (1974), 74-2 CPD 185; Radiology Services of Tidewater, *supra*. The Army contends the services for each year represent known requirements which have continued for 20 years, there is no doubt all line items of service will be ordered, there is reasonable certainty funds will be available to exercise all options and that because substantial start-up costs are required, the probability of effective future competition is doubtful. Under these circumstances, we agree that Fowler's low bid is not materially unbalanced and that there is no reasonable doubt that its acceptance will not result in the lowest ultimate cost to the Government.

The statute, 31 U.S.C. § 499, on which Inland bases part of its protest provides:

"All officers, agents, or other persons receiving public moneys appropriated by any Army appropriation Act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such Act."

Inland contends the Army's compliance with this statute requires a bidder to provide a price for each item supported by a different appropriation. However, the statute vests no rights in a bidder. It merely requires that appropriated funds be used for the purpose intended. We see nothing which prohibits the Army from apportioning the total contract price between the two supporting appropriations in amounts which are reasonably related to the value of the services provided for family housing and for regular Army operations. Moreover, as 31 U.S.C. § 628(a) permits an agency to charge one appropriation for the benefit of another appropriation provided final adjustment by charge to the appropriation benefited and credit to the financing appropriation is made on or before the close of each fiscal year, this apportionment need not be made at the outset of the contract.



For the Comptroller General
of the United States