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DECISION



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

FILE: B-204911.2

DATE: November 3, 1981

MATTER OF: Empire Electric Co., Inc.

DIGEST:

1. While low bidder's bid may be mathematically unbalanced, protester has not shown that bid was materially unbalanced and, therefore, there is no showing that award would not result in lowest cost to Government.
2. There is no legal basis for precluding award merely because low bidder submitted below-cost bid.
3. GAO does not review affirmative determinations of responsibility absent allegations of fraud or misapplication of definitive responsibility criteria.
4. Where protester's initial submission clearly shows protest is without legal merit, neither case development nor requested conference is necessary, and summary denial is in order.

Empire Electric Co., Inc. (Empire), protests the Navy's consideration of a bid submitted by TWI, Incorporated (TWI), under invitation for bids No. N00189-81-B-0103 issued by the Naval Supply Center, Norfolk, Virginia, for an indefinite quantity/ indefinite delivery labor and materials contract with firm-fixed unit prices. The contract covers the ripping out and reinstalling of insulation and lagging onboard ships.

Empire argues that TWI's bid is materially unbalanced because some items are bid so low that the bid price fails to recoup the item cost. In Empire's opinion, this constitutes a demonstrated lack of understanding of the subject matter of the solicitation which makes consideration of TWI's bid improper.

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The Navy has previously considered and rejected Empire's protest on the basis: (1) that Empire has failed to show that TWI's bid is materially unbalanced; (2) that TWI verified its bid; and (3) that TWI's understanding is a matter of responsibility properly considered under a preaward survey. We agree with the Navy and summarily deny Empire's protest.

Empire alleges that TWI's bid should be rejected under section M105, Evaluation of Options, paragraph "B," which reads:

"Any bid or proposal which is materially unbalanced as to prices for 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."

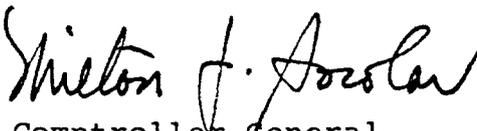
Empire argues that a bid should be rejected if it is mathematically unbalanced because it is possible for a bidder to bid in a manner which would allow it to recover its profit in the base year of the contract and then go out of business before the Government could receive performance under the option year of the contract.

As the above quotation of paragraph "B" indicates, a balanced bid is a bid in which each item carries its proportional share of cost and profit. An unbalanced bid is a bid where some items carry a disproportionately low share of cost and profit, while other items carry a disproportionately high share. Bidders submit unbalanced bids in an effort to capitalize on high turnover items by assigning a larger than appropriate share of cost and profit to those items in greatest demand. However, the mere fact that a bid is mathematically unbalanced does not make it nonresponsive. Global Graphics, Inc., 54 Comp. Gen. 84 (1974), 74-2 CPD 73. The bid becomes legally objectionable only when an overall assessment of the cost impact of the bid raises a reasonable doubt that award to the low unbalanced bid will not result in the lowest ultimate cost to the Government. In such circumstances, the bid is materially unbalanced and should be rejected as nonresponsive. See Radiology Services of Tidewater, B-194264, June 18, 1979, 79-1 CPD 432.

Empire has failed to present any arguments or information which would indicate that award to TWI will not result in the lowest ultimate cost to the Government and, therefore, has not shown that TWI's bid is materially unbalanced so as to require rejection under the unbalanced bid clause. This basis of protest is denied.

TWI's alleged lack of understanding of the scope of work, as reflected by its below-cost bid on some items, is not for our consideration. We note that TWI has verified its bid and that prior to award the Navy will conduct a preaward survey of TWI. The mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding award. Edward E. Davis Contracting, Inc., B-190055, September 29, 1977, 77-2 CPD 245. Further, we do not review an agency's affirmative determination of responsibility except where fraud or misapplication of definitive responsibility criteria is alleged. Edward E. Davis Contracting, Inc., supra. Neither is alleged here.

It is clear from Empire's submission that the issues presented are either legally without merit or not subject to our review. We therefore have decided the protest without obtaining an agency report and without the conference requested by Empire, since they would serve no useful purpose. Northern Illinois University, B-194055, March 15, 1979, 79-1 CPD 184,

for 
Comptroller General
of the United States