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**DECISION**



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

2/1/61

FILE: B-204431

DATE: March 15, 1982

MATTER OF: Safeguard Maintenance Corporation

**DIGEST:**

1. When bidder has been found nonresponsive for failure to submit proper bid bond, protest alleging that bid was unbalanced is academic, and GAO will not consider it.
2. When record indicates that bidder has considered inflation and offsetting factors in setting prices for option years, and protester has provided no evidence to contrary, GAO will deny protest alleging that bid is unbalanced because prices for base and option years are substantially the same.
3. When protest based on allegedly ambiguous solicitation is filed after bid opening, and protester has not explained why ambiguity was not apparent on face of solicitation, GAO will dismiss protest as untimely.

Safeguard Maintenance Corporation protests the award of a fixed price contract for custodial services at two Department of Agriculture buildings in Washington, D.C., under a solicitation issued by the General Services Administration. The firm contends that two bids lower than its own should have been rejected as unbalanced and that the solicitation was ambiguous. We deny that portion of the protest which concerns the bid of the awardee, Government Contractors, Inc., and dismiss the remainder.

The solicitation, No. GS-11C-10291, was issued on July 10, with an opening date of August 6, 1981. It stated, among other things, that any bid might be rejected as nonresponsive if it was materially unbalanced as to prices for the initial and two option years; an unbalanced bid was defined as one based on prices which were significantly less than cost for some work and significantly overstated for other work.

Safeguard, whose protest was filed on August 18, 1981, contends that this clause should be applied to the bids of A&C Buildings and Industrial Maintenance Company and Government Contractors. However, since A&C was found non-responsive for failure to submit a properly executed bid bond, the protest on this basis is academic. See Gupta Carpet Professionals, Inc., B-204260, August 24, 1981, 81-2 CPD 172, stating that when a protest involves a firm which was not awarded a contract, we will not consider allegations regarding its bid.

As for Government Contractors, its monthly bid prices for custodial services, compared with Safeguard's, were as follows:

	<u>Government Contractors, Inc.</u>	<u>Safeguard Maintenance Corp.</u>
Base Year	128,000	129,000
Option Year No. 1	128,000	142,000
Option Year No. 2	<u>132,000</u>	<u>158,000</u>
TOTAL	\$388,000	\$429,000
	(3% Prompt Payment Dis- count Each Year)	(5% Prompt Payment Dis- count Each Year)

Bidders also were required to submit hourly prices for additional productive and supervisory services. Evaluation, however, was on the basis of bids for custodial services only, with award to go to the bidder with the lowest total for all three contract years (determined by applying the prompt payment discount to the monthly price, then multiplying by 12, then adding the total discounted prices for the base and option years). Evaluated totals were as follows:

	<u>Government Contractors, Inc.</u>	<u>Safeguard Maintenance Corp.</u>
Base Year	\$1,489,920	\$1,470,600
Option Year No. 1	1,489,920	1,618,800
Option Year No. 2	<u>1,536,480</u>	<u>1,801,200</u>
TOTAL	\$4,516,320	\$4,890,600

Thus, Safeguard's bid for the first year was lower than that of Government Contractors; however, when options were evaluated, as provided in the solicitation, Government Contractors was the lowest responsive bidder.

Safeguard argues that because Government Contractors' prices for custodial services for the base and first option year are identical, and there is little increase in the second option year, the bid for the first year is unbalanced. Safeguard supports this argument by alleging that the bid does not provide for inflation. Government Contractors, however, states that its first option year price does provide for inflation, but anticipates a decrease in start-up and equipment costs; the second option year, the firm adds, is priced high enough to cover increased costs not included in the escalation clause of the contract.

As we have often stated, allegedly unbalanced bids require a two-step analysis to determine: (1) whether each item or year carries its share of the cost of work plus profit--if not the bid is mathematically unbalanced--and (2) whether acceptance of the bid, if it is mathematically unbalanced, will result in the lowest cost to the Government. If there is no assurance of this, the bid is materially unbalanced and must be rejected. See TWI, Incorporated, B-202966, November 24, 1981, 61 Comp. Gen. \_\_\_\_\_, 81-2 CPD 424.

In a case similar to this one, also involving custodial services, in which allegedly unbalanced bid prices were substantially the same (\$152,495, \$155,503, and \$155,503) for a base and two option years, our Office looked for evidence that the bidder had overlooked probable increases in wages, taxes, or other costs, or that the bidder believed such increases would be offset in option years by lack of start-up costs and increased efficiency. Since there was nothing in the record except the protester's speculative statements to indicate that these factors had not been considered, we upheld the award, stating that we would not look behind the bid in an attempt to ascertain the business judgments that went into it. Refre and Associates, B-196097, April 25, 1980, 80-1 CPD 298.

Here, we have the low, responsive bidder's statement that it has considered inflation and offsetting factors; the protester has provided no evidence to the contrary. We therefore cannot conclude that Government Contractors' bid is mathematically unbalanced. In any event, GSA expects that the services will continue to be needed and that funds

will be available to cover them, so that options probably will be exercised. Thus, we have no reason to find that the bid is materially unbalanced, i.e., that award to Government Contractors will not result in the lowest overall cost to the Government.

Safeguard also protests that the solicitation's escalation clause was ambiguous. This required bidders to warrant that their option prices had not included any allowances for increased costs which would be covered by the escalation clause.

We find this basis of protest untimely. Under our Bid Protest Procedures, 4 C.F.R. § 21.2 (1981), alleged improprieties which are apparent on the face of a solicitation must be protested before bid opening date. We fail to see how the option year prices of the low bidders show, as Safeguard contends, that this was a latent ambiguity. Safeguard has not explained this further, and Government Contractors states that it encountered no problems in understanding the provision. Safeguard's protest on this basis therefore will not be considered.

The protest is dismissed in part and denied in part.

*for* Milton J. Rowland  
Comptroller General  
of the United States