

DECISION

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

FILE: B-209194**DATE:** July 21, 1983**MATTER OF:** Adam II, Limited**DIGEST:**

1. Protest against award on basis that low bid is unbalanced is denied. Even assuming low bid is mathematically unbalanced, low bid is not materially unbalanced since estimates stated in IFB are based upon actual historical experience and protester has presented no evidence to cast doubt upon the accuracy of IFB estimates. Agency statement in protest report that estimates might possibly decrease does not affect this conclusion.
2. Protester's wholly speculative allegation does not satisfy protester's burden to affirmatively prove its case.
3. In view of conclusion that award is otherwise proper, we will not consider procedural matter of propriety of award while protest was pending since, even if award was contrary to applicable regulations, its legality would not be affected.

Adam II, Limited (Adam II), protests the award of a contract to Alliance Properties, Inc. (Alliance), under invitation for bids (IFB) No. F29650-82-B-0150, a total small business set-aside, issued by the Kirtland Air Force Base for the maintenance of military family housing.

We deny the protest.

The IFB called for certain items to be bid on a fixed-price-per-month basis while other items were bid on a unit price which was then applied to estimated quantities furnished by the Air Force. The Air Force acknowledges that Alliance's bid on the fixed-price items was approximately 38 percent below the next highest bid while its bid for the

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estimated items was approximately 43 percent higher than the next lowest bid. For the prescribed evaluation of basic and 4 option year prices, Alliance was the low bidder at \$6,774,472.50, and the protester was apparently second low at \$7,519,018. The Air Force determined that the estimated quantities used in the IFB were reasonably based and that the award to Alliance would result in the lowest overall cost to the Government. As a result, the Air Force found that Alliance's bid was not materially unbalanced and, after Alliance verified its bid at the agency's request, Alliance was awarded the contract.

Adam II argues that the award will not result in the lowest overall cost to the Government since the estimated quantities supplied by the Air Force were erroneous. As proof, Adam II cites a statement in the Air Force report indicating that the estimated quantities of work required could possibly decrease rather than increase as a result of ongoing rehabilitation of the family housing units under another contract.

Our Office has recognized that there are two aspects to unbalanced bidding. The first is the mathematical evaluation of the bid to determine whether each item of the bid carries its share of the cost of the work plus profit or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is not materially unbalanced unless there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Consequently, only a bid found to be materially unbalanced may not be accepted. Diversified Computer Services, Inc., B-201681, July 7, 1981, 81-2 CPD 13.

Even if we assume that Alliance's bid is mathematically unbalanced, we do not find the bid to be materially unbalanced. Adam II has presented no evidence to show that the actual quantities to be furnished under the contract will be so much higher than the estimated quantities that the contract will not result in the lowest overall cost to the Government. The statement in the Air Force report relied upon by Adam II merely reflects an Air Force belief that it is more likely than not that the amount of maintenance actually required would decrease rather than increase. This statement does not support Adam II's allegation that the contract with Alliance will not result in the lowest cost to

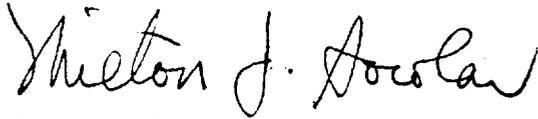
the Government, since it tends to show that the estimated quantities furnished by the Air Force, upon which Alliance bid higher prices, will not be exceeded. In any event, the Air Force estimates were based on historical experience. Our decisions have approved the use of estimates based upon previous work requirements. G & B Parking Company, Inc., B-204192, April 20, 1982, 82-1 CPD 359; Diversified Computer Services, Inc., *supra*. Also, the estimates were further verified as accurate by the project engineer by computing the average amount of line item work actually performed for the immediate 5-year period. In these circumstances, and absent any rebuttal from the protester, we cannot find the IFB estimates to be unreasonable. Accordingly, since the estimates appear sufficiently accurate to permit the Air Force to determine that Alliance's bid will be the low cost to the Government, we cannot find Alliance's bid to be materially unbalanced.

Adam II also charges that the procurement process was unfair in that it was possible that Alliance may have been aware of information indicating that the estimated quantities of maintenance work required by the contract would possibly decrease. We find the allegation to be wholly speculative and insufficient to satisfy the protester's burden of affirmatively proving its case. Edward E. Davis Contracting, Inc., B-199524, January 13, 1981, 81-1 CPD 20. Also, Adam II alleges that the Air Force should have revealed to the bidders the possibility that the estimated quantities of maintenance work would possibly decrease. In this regard, we note that we have determined that the IFB estimates were reasonably accurate and we find no basis to conclude that the information concerning a mere possibility of work decrease should have been provided the bidders.

Adam II finally protests the award to Alliance being made within 72 hours after bid opening and after its protest was filed and pending with our Office. In view of our conclusion that the Alliance bid was not materially unbalanced and the procurement was otherwise proper, the propriety of the award to Alliance while the protest was pending is academic. Starline Incorporated, 55 Comp. Gen. 1160 (1976) (1976), 76-1 CPD 365. Also, even if such award was contrary to applicable regulations, its legality would not be affected. Diversified Computer Services, Inc., *supra*. We note, however, that the award was made in accordance with the applicable provision of the Defense Acquisition Regulation (1-7031-1, Defense Acquisition Circular No. 76-40, November 1, 1972). That provision requires that

in small business set-aside procurements, award will not be made prior to 5 working days after bid opening unless the contracting officer determines in writing that award must be made without delay to protect the public interest. The record contains the appropriate written determination by the contracting officer. Also, the record contains a finding by the Small Business Administration which denied Adam II's size protest and found Alliance to be a small business concern for the purposes of the present solicitation. Therefore, this matter requires no further consideration by our Office.

The protest is denied.

for 
Comptroller General
of the United States