

# DECISION



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

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FILE:

B-213915

DATE: July 16, 1984

MATTER OF:

Ace Van & Storage Company

## DIGEST:

1. Where bidders are advised in invitation for bids that oral explanations or instructions given before award of contract would not be binding on contracting agency, bidders rely on oral advice at their own risk.
2. Award to bidder who submitted a mathematically unbalanced bid is upheld, since material unbalancing is not present.

Ace Van & Storage Company (Ace) protests the award of a contract for shipment and storage services to Allstate Van and Storage Company (Allstate) under invitation for bids (IFB) N00244-84-B-4761 issued by the Naval Supply Center (NSC), San Diego, California.

We find the protest without merit.

Ace contends it was misled by oral statements made by the contracting officer concerning language in the IFB. Ace complains that the bid submitted by Allstate is materially unbalanced, because the estimates set forth in the IFB were inaccurate and would not assure the government of receiving the lowest price, and that Allstate's bid should have been rejected.

The IFB invited bids on a requirements-type contract to provide transportation and storage services. Included was a list of the categories of service and materials the Navy anticipated it needed, together with an estimate of the gross hundred weight of property (GCWT) which would need to be packed. Bidders were required to offer prices for packing in item 4(a)(1) (government-furnished containers) and item 4(b)(1) (contractor-furnished containers). Allstate and Ace bid on these items as follows:

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	Estimated GCWT	Allstate Price per GCWT	Ace
4(a)(1)	4,000	\$ 5.00	\$28.50
4(b)(1)	8,000	\$45.00	\$31.50

Allstate was the low bidder with a total evaluated price of \$568,100 on the schedule which included the above items. Ace was second low at \$662,275.

Ace contends that, when it inquired as to what certain language in the IFB meant, it was given misleading information which affected the way it bid. Ace alleges that the contracting office advised that each line item of its proposed bid must be at a fair and reasonable price and that bids which unreasonably exceeded those of other bidders would be considered nonresponsive. Consequently, Ace states that its bid was higher than it would have been had it submitted an unbalanced bid.

NSC states that the contracting office only advised Ace that each line item price would be examined in determining the fairness and reasonableness of the entire contract award.

Standard form 33-A, which is included in the solicitation, provides as follows:

"3. Explanation to Offerors. Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc. must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. . . ." (Emphasis added.)

This provision clearly put bidders on notice not to rely on oral statements. The general rule in these situations is that the bidder must suffer the consequences of its reliance upon such advice. Jensen Corporation, 60 Comp. Gen. 543 (1981), 81-1 C.P.D. ¶ 524. Therefore, even if the contracting officer's oral advice misled the protester, the erroneous advice does not bind the agency or require the submission of new bids. Aardvark/Keith Moving Company, B-200680, Mar. 6, 1981, 81-1 C.P.D. ¶ 180.

Next, we turn to the matter of Allstate's unbalanced bid. When an agency solicits bids for a requirements contract on the basis of estimated quantities, the agency must base its estimates on the best information available. However, there is no requirement that the estimates be absolutely correct. Rather, the estimated quantities must be reasonably accurate representations of anticipated actual needs. Space Services International Corporation, B-207888.4 et al., Dec. 13, 1982, 82-2 C.P.D. ¶ 525.

The NSC Personal Property Department (PPD) provided the estimates for items 4(a)(1) and 4(b)(1) by taking into consideration the actual prior performance for the same services, together with an estimate of the necessary services for 1984. However, as a result of the protest, PPD has reexamined the estimates. PPD has indicated that the estimates may have been in error, but that, even if the revised estimates are used to evaluate the bids, the standing of the bidders would not change. Allstate's bid would increase by \$80,000 to \$648,100 while Ace's bid would increase by \$6,000 to \$668,275. Allstate's bid would remain the lowest.

In that regard, our Office has recognized that there is a two-fold aspect to unbalanced bidding. The first aspect is a mathematical evaluation of the bid to determine whether each bid item carries its share 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 materially unbalanced if there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the government. Consequently, only a bid found to be materially unbalanced may not be accepted. Reliable Trash Service, B-194760, Aug. 9, 1979, 79-2 C.P.D. ¶ 107.

In this case, we agree with the NSC that, although Allstate's bid was mathematically unbalanced, it was not materially unbalanced, since, whether the estimate in the IFB or the revised estimate is used to evaluate the bids, Allstate's bid remains low.

Ace contends that the actual requirement for the prior contract should have been used also to evaluate the bids for the immediate contract and that, if it had been, Ace would have been evaluated the low bidder. Ace states that this

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would cast reasonable doubt that award to Allstate would result in the lowest ultimate cost to the government. However, Ace has furnished no evidence that establishes that the previous requirement represents the government's need for the immediate contract. Therefore, Ace has not met its burden of proof. Space Services International Corporation, B-207888.4 et al., supra.

Accordingly, the protest is denied.

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