

DECISION

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

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FILE: B-216447**DATE:** September 27, 1984**MATTER OF:** Gyro Systems Co.**DIGEST:**

1. An offer is not materially unbalanced merely because solicitation estimates are not precise; the estimates must be inaccurate, such as to cast doubt on the government's getting the lowest price by acceptance of the unbalanced offer, for the offer to be regarded as materially unbalanced.
2. A below-cost offer, or "buy-in," is not legally objectionable.

Gyro Systems Co. protests award of a contract to another company under request for proposals No. N00189-84-R-0075 issued by the Naval Supply Center, Norfolk, Virginia. Gyro alleges that the awardee's prices are unreasonable because they are "materially unbalanced" and because the hourly bid rate is "unreasonably low."

We understand that the solicitation called for different categories of labor, with estimated hours for each category indicated. The protester advises that it bid different rates for the various labor categories, but that the awardee bid one rate for all categories. The alleged material unbalancing comes from the use of that single rate, since, as the protester puts it, the "hourly rate for a Gyrocompass Mechanic Supervisor on overtime is the same as for an Apprentice Electrician. . . ." Award, the protester advises, was made on the basis of price.

A numerically unbalanced offer may be accepted; it is only a materially unbalanced offer that must be rejected. A numerically unbalanced offer will be materially unbalanced if the solicitation estimates are unreliable such that there is doubt that its acceptance would result in

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the lowest cost to the government. Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD ¶ 164. Here, the protester states only that "the exact type of hours . . . for each work classification" is not known. That, of course, is always the situation when estimates are used, which is why the estimates are used in the first place. Since the protester alleges only that the estimates are not precise rather than that they are not accurate, there would be no basis for us to conclude that the awardee's offer was materially unbalanced.

The protester also asserts that the awardee's single rate is unreasonably low because it cannot provide for various direct and indirect costs, as well as profit, associated with performance. The protester states that the awardee was buying-in by submitting a below-cost offer. There is no legal basis to object to an award on the basis of a below-cost offer. Technical Food Services, Inc., B-210024, Dec. 21, 1982, 82-2 CPD ¶ 563. Whether the offeror will be able to meet contract requirements in light of its offered price is a matter of responsibility. Before award, an agency must make an affirmative determination that the offeror is responsible. Because that is a very subjective determination based on business judgment, we will not review a challenge to such an affirmative determination unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a specific responsibility criterion set forth in the solicitation was not met.

The fact that a "buy-in" may be involved does not invalidate the offer. Contracting officers, however, are required to "take appropriate action to ensure buying-in losses are not recovered" through change orders or otherwise. See Federal Acquisition Regulation, § 3.501-2(a), 48 Fed. Reg. 41,102, 42,112 (1983) (to be codified at 48 C.F.R. § 3.501-2(a); Tombs & Sons, Inc., B-206810, May 10, 1982, 82-1 CPD ¶ 447.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel