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

FILE: B-222109.2 **DATE:** May 21, 1986

MATTER OF: Fidelity Moving & Storage Co.

DIGEST:

1. Any assessment as to whether or not a bid is mathematically unbalanced must go beyond the percentage differentials between base and option year prices to determine if in fact those prices are accurate reflections of the actual costs to be borne by the bidder in performing each year of the contemplated contract.

2. A mathematically unbalanced bid which did not become low until after the beginning of the second option year, the last year of performance, was properly rejected as materially unbalanced where the agency had clear reason to doubt that this option would be exercised.

Fidelity Moving & Storage Co. protests the rejection of its bid as materially unbalanced under invitation for bids (IFB) No. DAHC30-86-B-0007, issued by the Military District of Washington (MDW), Department of the Army. The procurement is for the acquisition of moving services for outbound/inbound and local moves of household goods of military personnel assigned to new duty stations. Fidelity complains that the Army unreasonably determined that acceptance of its bid might not ultimately result in the lowest overall cost to the government. We deny the protest.

Background

The IFB sought bids to furnish moving services in various geographic areas under different types of schedules, and contemplated multiple awards of requirements contracts for a 1-year base period plus two 1-year options. The IFB provided that bids would be evaluated and awards made on the basis of the total aggregate price (base year and options) of all items within an area of performance under a given schedule.

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Fidelity and District Moving and Storage, Inc. (District) were the only bidders for Areas 3 and 4 under combined Schedules I and II (outbound/inbound services). The bids were as follows:

Area 3

	Fidelity	District
Base year	$415,030	$383,855
1st Option year	$372,627	$383,855
2nd Option year	$318,307	$383,855
Total	$1,105,964	$1,151,565

Area 4

	Fidelity	District
Base year	$390,430	$366,105
1st Option year	$350,487	$366,105
2nd Option year	$299,857	$366,105
Total	$1,040,774	$1,098,315

Fidelity was the apparent low bidder in the aggregate for both Areas 3 and 4. However, District filed a protest with the MDW contracting officer asserting that Fidelity's bid was materially unbalanced because the firm's option year prices were significantly less than its base year prices. In its protest, District pointed out that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.2175 5(b) (1984), as incorporated into the IFB, provides that an offer may be rejected as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities, and that an offer is unbalanced when it is based on prices significantly less than the cost for some work and prices which are significantly overstated for other work. District further noted that bidders were expressly advised at the pre-bid conference that the options might not be exercised if the particular deviation authority under which MDW had issued the IFB were not extended.1/

1/ The record indicates that the IFB was issued under a deviation authorized by the Military Traffic Management Command, which is responsible for establishing military standards for the preparation of household goods for moving.

The contracting officer determined that Fidelity's bid was materially unbalanced, and, therefore, sustained District's agency-level protest and rejected Fidelity's bid as nonresponsive. Fidelity has protested the rejection to this Office.

Fidelity argues that the rejection was improper because the contracting officer failed to make an initial finding that the bid was mathematically unbalanced prior to determining that the bid was materially unbalanced. Fidelity contends in this regard that its bid was not mathematically unbalanced because its prices were neither significantly overstated nor understated. The firm notes that its option year prices for each area were only 10 to 25 percent less than its base year prices, and asserts that prior precedent of this Office precludes a finding that such differentials constitute mathematical unbalancing.

Moreover, Fidelity states that, in fact, legitimate business reasons existed for its pricing structure, such as the expectations that (1) its base year costs would be higher given the need to invest in heavy operating equipment and (2) that increased labor efficiencies in the option years would result in cost reductions. Fidelity asserts that these reasons, as well as its desire to offer option year prices attractive to the government, were made known to MDW during a contact between the contracting officer and Fidelity's president.

Analysis

This Office has recognized that unbalanced bidding entails two aspects. The first aspect involves a mathematical evaluation of the bid to determine whether each element of the bid carries its proportionate share of the total cost of the work plus profit, or whether the bid is structured on the basis of nominal prices for some work and inflated prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of accepting a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al., Apr. 22, 1983, 83-1 CPD ¶ 438.

Consequently, a materially unbalanced bid may not be accepted. Reliable Trash Service, B-194760, Aug. 9, 1979, 79-2 CPD ¶ 107.

(1) Mathematical Unbalancing

The mathematical aspect of unbalanced bidding is assessed by the contracting officer's review of the pricing structure of the bids, bearing in mind any differences between the scope and the nature of the services offered during the base period and the services offered during the option periods. Roan Corp., B-211228, Jan. 25, 1984, 84-1 CPD ¶ 116. This assessment must go beyond the mere percentage differentials between base and option period prices to determine whether those prices are accurate reflections of the actual costs that will be borne by the bidder in performing each year of the contemplated contract. See Integrity Management International, Inc., B-217016, Dec. 11, 1984, 84-2 CPD ¶ 654.

While this Office has previously recognized that a 25 to 50 percent differential between base and option period prices does not necessarily constitute mathematical unbalancing, per se, see Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656; Propserv Inc., B-192154, Feb. 28, 1979, 79-1 CPD ¶ 138, these cases do not establish conclusively in this particular instance that Fidelity's bid, with 10 to 25 percent base/option period differentials, contains neither overstated nor understated prices. Rather, the determinative question is whether Fidelity's bid pricing structure is reasonably related to the actual costs to be incurred in each year. See Solon Automated Services, Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548.

In this regard, MDW points out that the moving services are essentially the same in each contract year, and that Fidelity, in fact, is the incumbent contractor. Therefore, MDW discounts Fidelity's assertion that it will incur significant start-up costs in the first year and will experience reduced costs in the option years due to greater labor efficiencies. We believe that MDW's position is well-taken.

We note that Fidelity has never explained why it would require heavy operating equipment for the new effort where it has been the incumbent contractor for the past year. Even if this equipment is needed, the firm has never provided actual cost figures which would serve to confirm that its higher base year price is legitimate in the circumstances. Cf. Applicators, Inc., B-215035, supra (rejected bidder provided full explanation of start-up costs to support its assertion that base year price not overstated). Moreover, if Fidelity anticipated that it would incur significant costs for the acquisition of additional equipment to perform the proposed contract which it expected to recoup in the first performance year, we would expect the option year prices to be similar, with only the base year price being appreciably higher. We would not expect to see, as here, second option year prices some 15 percent less than the first option year prices. Cf. Integrity Management International, Inc., B-217016, supra (base year 15 percent more due to legitimate start-up costs, but differential between first and second option years less than 1 percent).

A bidder may properly allocate equipment costs to the base period where it would have no use for the equipment after the contemplated contract ends, since, if these costs were allocated throughout the potential life of the contract and the options were not exercised, the bidder would never be able to recover its full costs of performance. Applicators, Inc., B-215035, supra; Roan Corp., B-211228, supra. Here, however, it is obvious that any heavy operating equipment Fidelity might acquire to perform the contemplated contract would not be unique to that effort and would be retained by the firm and utilized in the performance of any future moving contract. As we indicated in Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al., supra, it is improper for a bidder to obtain government funds in the base year in an effort to recoup all equipment costs in that first year of performance where the bidder will own and use the equipment in years subsequent to the contract period. In such a situation, since the funds are more properly allocable to the option years, the bidder is likely to receive a financial windfall if the options are not exercised. Id.

With regard to Fidelity's contention that it will realize reduced costs in the option years because of greater labor efficiencies, we find no support as well for that explanation of its pricing structure. There is no dispute that the moving services are virtually identical in each year of performance. Absent any indication to the contrary, it is presumed that Fidelity, as the incumbent, has already had the benefit of the learning curve, that is, through experience, has had the opportunity to overcome any labor inefficiencies that a new contractor might encounter. Therefore, we conclude that anticipated reductions in labor costs in the option years of the contract are unwarranted where the services remain the same. As a consequence, we are not persuaded that Fidelity's option year prices are not significantly understated.

Accordingly, we find that Fidelity's bid as submitted was mathematically unbalanced.

(2) Material Unbalancing

Although Fidelity argues that MDW did not properly analyze its bid to see if it was mathematically unbalanced before rejecting it as materially unbalanced, we think that the former analysis was implicit in the agency's determination that acceptance of the bid, with its significantly disproportionate base/option year prices, would not result in the lowest ultimate cost to the government. In this regard, MDW states that Fidelity's bid does not enjoy a price advantage over District's bid until some point into the final (third) period of performance; specifically, Fidelity's bid for Area 3 does not become low until the fourth month of the second option year, and its bid for Area 4 does not become low until the second month of that final year.

A sufficient basis exists to consider a bid materially unbalanced where the bid's pricing structure prevents it from becoming low until the final contract year, thus reasonably suggesting that an award might not be in the government's best economic interest. USA Pro Co., Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159. Here, we believe that MDW has a clear reason to doubt that acceptance of Fidelity's bid will result in the lowest ultimate cost to the government because of the strong possibility that at least the second option year will not be exercised. Id. As noted above, the IFB was issued under a deviation authorized by the Military Traffic Management Command, and the contemplated contract was the result of several years effort to standardize terms and provisions, which it was anticipated would remain effective throughout the full 3-year period. However, MDW states that it has now been advised that significant additional changes in contract format have been proposed "which will undoubtedly preclude exercise of the options, if not for 1987 [first option year], then certainly for 1988 [second option year]." Since Fidelity's bid does not become low until after the beginning of 1988, MDW's present belief that the deviation authority will likely not be extended to the third year of performance provides a sufficient basis to consider the bid materially unbalanced. Accordingly, the bid was properly rejected.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel