

Winnipeg



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Blane Enterprises, Inc.

File: B-224416

Date: October 17, 1986

DIGEST

1. Protest involving issues either of prospective awardee's responsibility or of contract administration are not for General Accounting Office's review. See 4 C.F.R. §§ 21.3(f)(1) and (5) (1986).
2. For a bid to be rejected as unbalanced, bid must be shown to be both mathematically and materially unbalanced and that award based on the questioned bid will not result in the lowest ultimate cost. Since protester has not made this showing about questioned bid, basis of protest is denied.
3. Untimely filed ground of protest concerning bidding provision which would allegedly result in unenforceable contract is not considered "significant" so as to be considered notwithstanding untimeliness since protest involving similar issue has been previously decided.

DECISION

Blane Enterprises, Inc. (Blane), has protested the Marine Corps' proposed award of a contract under sealed-bidding procedures to TVI Corporation (TVI) for a "thermal target system, spare parts and maintenance of the systems" at a price of about \$18,000,000; Blane's comparable price was about \$47,000,000.

We deny the protest in part, and dismiss it in part.

The Marine Corps reports that the system to be purchased will be for use by the Department of the Army to "support target acquisition and live fire training under a variety of conditions." The Marine Corps further reports that, consistent with the terms of the bidding documents, each bid was evaluated based on the "maximum quantities specified for the basic plus option years." Each company's bid showed a

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similar pricing pattern for the basic year and option years--that is no difference between basic-year and option-year pricing. In response to the Marine Corps' specific request, TVI verified both the price and the product which it offered. In addition, the Marine Corps has conducted a preaward survey, and we are informed that the survey was positive.

Blane has submitted many arguments concerning the alleged impropriety of the low price of TVI's bid, for example: (1) TVI's low price shows that it does not intend to supply a conforming product; (2) TVI's bid price is considerably lower than the price the company bid for earlier contracts; and (3) TVI's prospective loss on the contract, in Blane's view, is so high that the "limited net worth of TVI" would not be enough to fund the Marine Corps' losses should TVI default on the contract.

All these arguments (including an allegation that TVI did not timely complete a prior contract) essentially involve whether the Marine Corps will properly administer the contract and whether TVI is a responsible bidder. Both these questions are generally not for our Office's review. See 4 C.F.R. §§ 21.3(f)(1) and (5) (1986).

Moreover, acceptance of a below-cost bid is not illegal, and a potential "buy-in" by one bidder does not provide a basis on which an award may be successfully challenged. National Office Moving Co.; Keahey Moving and Storage, B-203304; B-203304.2, Jan. 4, 1982, 82-1 C.P.D. ¶ 4. Although Blane has asked us to independently review the preaward survey report to determine the extent to which TVI's finances were examined by the preaward survey team, it is not our practice to do so for this review would improperly involve us in the contracting officer's responsibility decision.

Consequently, we dismiss this ground of Blane's protest.

Blane has also alleged that TVI's bid should be rejected as unbalanced and that the bidding documents are defective.

As to the alleged unbalancing of TVI's bid, Blane alleges that TVI bid substantially over its costs on "numerous items" such as items 0005B, 0011BA and 017BA "where the maximum quantities estimated were very low" and "substantially below its costs on other [unspecified] items." Blane's arguments about TVI's "costs" must be considered speculation since TVI's bid contains fixed prices, not costs. In any event, for a bid to be rejected as unbalanced, it must be shown to be both mathematically and materially unbalanced, and that an award based on the bid in question will not result in the

lowest ultimate cost. Gichner Mobile Systems, B-216172, May 13, 1985, 85-1 C.P.D. ¶ 534.

Blane has not questioned the Marine Corps' view that an award to TVI, based on the submitted prices, will result in the lowest price to the government (the absence of this result would be material unbalancing in TVI's bid) or even shown, by detailed mathematical analysis, that TVI's prices are based on nominal prices for some work and enhanced prices for other work (mathematical unbalancing). Indeed, Blane has not identified any specific items of underpricing in TVI's bid.

Consequently, we deny this basis of protest.

Finally, Blane argues that a provision of the bidding documents improperly results in an unenforceable contract should the Marine Corps require less than the minimum ordering quantities listed in the bidding documents. The Marine Corps responds that this issue is untimely raised after bid opening. See 4 C.F.R. § 21.2(a)(1). In reply, Blane admits the issue is untimely but argues that the issue is "significant" and should nevertheless be considered. See 4 C.F.R. § 21.2(a)(3)(c). We have considered a protest involving the alleged lack of an enforceable contract (see S.F.A. Corp. 63 Comp. Gen. 154 (1984), 84-1 C.P.D. ¶ 57); therefore, this issue is not significant and will not be considered. (See Beech Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 C.P.D. ¶ 694).

Protest denied in part, and dismissed in part.

for *Seymour E. Gross*
Harry R. Van Cleve
General Counsel