The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Howell Construction, Inc.

File: B-225766

Date: April 30, 1987

DIGEST

The apparent low bid for a contract contemplating a 5-month base period and 2-option years is mathematically unbalanced where there is an 85 percent differential between the first and second option years, and the bidder cannot explain why its bid is structured so differently from both the other bids and the government's cost comparison estimate. Since the agency has a reasonable doubt that acceptance of the bid, which does not become low until into the second option year, would ultimately result in the lowest overall cost to the government, the bid is properly rejected as materially unbalanced.

DECISION

Howell Construction, Inc. protests the rejection of its bid as materially unbalanced under invitation for bids (IFB) No. F22600-87-B-0002, issued as a total small business set-aside by the Department of the Air Force. The procurement is for the acquisition of painting services at Keesler Air Force Base, Mississippi, and involves a cost comparison conducted in accordance with Office of Management and Budget Circular No. A-76 to determine whether it is in the government's best economic interest to contract the services or to retain them in-house. Howell, the apparent low bidder, complains that the Air Force unreasonably determined that acceptance of the firm's bid might not ultimately result in the lowest overall cost to the government.

We deny the protest.1/

1/ After filing the protest, Howell also filed suit for injunctive relief in the United States Claims Court. Howell Construction, Inc v. United States, Docket No. 107-87-C. Since the court has requested our decision in the matter, we have not dismissed Howell's protest. See 4 C.F.R. § 21.3(f)(11) (1986).

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BACKGROUND

The IFB contemplated the award of contract for a 5-month base period with two 1-year options, and provided that bids would be evaluated for award purposes by adding the total price for all options to the total price for the basic requirement. Bidders were cautioned that the government might reject a bid as nonresponsive if it were materially unbalanced as to prices for the base period and the option years.

Five bids were received in response to the invitation. Howell's bid was low with a total evaluated price of $1,020,690. Fasco Construction Company was second low with a total bid price of $1,109,078.88, and the government's in-house cost estimate was third low at $1,441,594.00. The three other bids, from Evco National, Bush Painting Company, Inc., and Melvin Pierce Painting, Inc., were $1,560,263.16, $1,839,452.90, and $1,901,075.75.

Shortly after bids were opened, Fasco protested to the agency that Howell's bid should be rejected as materially unbalanced with regard to the particular pricing structure of the bid. The base and optional periods of performance were priced as follows:

Base	$ 253,692.60
1st option	497,816.50
2nd option	269,181.30
Total	$1,020,690.40

The other bids, including the government's estimate, demonstrated the following pricing structures:

	Fasco	Government	Evco
Base	$ 199,200.38	$ 241,960.00	$ 286,536.16
1st option	452,783.00	590,796.00	668,309.50
2nd option	457,095.50	608,838.00	605,417.50
Total	$1,109,078.88	$1,441,594.00	$1,560,263.16

	Bush	Pierce
Base	$ 282,798.50	$ 319,464.30
1st option	756,827.20	766,899.00
2nd option	799,827.20	814,712.45
Total	$1,839,452.90	$1,901,075.75

Fasco argued that Howell's bid was materially unbalanced and, therefore, should be rejected as nonresponsive because, in particular, the second option year price was so much lower than the first option year price. Although Howell was asked for, and orally furnished, an explanation of its bidding structure, the Air Force ultimately concurred with Fasco's argument and determined to reject Howell's bid as nonresponsive. Howell's protest to this Office follows that decision. No award has been made pending our resolution of the protest.

ANALYSIS

The Air Force's decision to reject Howell's bid as materially unbalanced is without legal objection if (1) the bid is in fact mathematically unbalanced and (2) the agency reasonably doubted that an award to Howell would result in the lowest overall cost to the government. USA Pro Co., Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159; Crown Laundry and Dry Cleaners, Inc., B-208795.2 et al., Apr. 22, 1983, 83-1 CPD ¶ 438.

A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profit. Id. The pricing structure of a bid contemplating the award of a contract for a base period plus options, as here, should indicate that the prices charged for the various periods of performance are reasonably related to the actual expenses to be incurred by the bidder during that period. See Solon Automated Services, Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548. Although there may be certain pricing variables depending on the nature of the procurement, a bid will be questioned if, in terms of the pricing structure evident among the base and optional periods, it is neither internally consistent nor comparable to the other bids received. Thus, a large pricing differential existing between the base and optional periods, or between one optional period and the other, is itself prima facie evidence that the bid is mathematically unbalanced. See USA Pro Co., Inc., B-220976, supra; Reliable Trash Service, B-194760, Aug. 9, 1979, 79-2 CPD ¶ 107.

Here, noting that the painting services to be performed are generally the same in each contract period, we observe that Howell's price for the 5-month base period represents some 25 percent of its total bid, whereas the base period prices for the other bids and the government's estimate range from 15 to 18 percent of those offers. (The base period is itself some 17 percent of the total possible contract period.) Moreover, Howell's combined price for the base period and the first option year--elements which together comprise only 59 percent of the anticipated 29-month total performance period--represents some 74 percent of its total bid price. In contrast, the respective percentages in the other bids range from 57 to 61 percent. Most significantly, the differential between Howell's first and second option year prices is approximately 85 percent, a differential which by its magnitude alone indicates that the bid is mathematically unbalanced. See USA Pro Co., Inc., B-220976, supra; Reliable Trash Service, B-194760, supra; cf. Propserv Inc., B-192154, Feb. 28, 1979, 79-1 CPD ¶ 138 (bids with base/option period price differentials of as much as 30 to 50 percent not found to be mathematically unbalanced). The other bids, except EVCO's, and the government's estimate show pricing increases between the first and second option years ranging from 1 percent to slightly more than 6 percent; EVCO's bid shows a decrease of some 10 percent.

Although Howell has offered business reasons for its bid structure, which essentially front-loaded the bid price into the base period and, especially, the first option year at the expense of the second option year, it is not the practice of this Office to look behind a bid to ascertain the business judgments that went into its preparation. Crown Laundry and Dry Cleaners, Inc., B-208795.2 et al., supra, 83-1 CPD ¶ 438 at 5. Moreover, a firm's business reasons for pricing a final option year much lower than the preceding optional period are given little weight where the firm has failed to explain why its bid should be viewed as mathematically balanced in face of the radically different option year pricing patterns evident in the other bids. See USA Pro Co., Inc., B-220976, supra. Here, we have no doubt but that Howell's bid, which is both internally inconsistent with respect to the first and second option year prices and not comparable in structure to the other offers, is mathematically unbalanced. Id.

The remaining question is whether the Air Force could reasonably determine that acceptance of Howell's bid, although in fact evaluated as low under the terms of the IFB, might not ultimately result in the lowest overall cost to the government. We find sufficient grounds existing to support that determination.

The Air Force calculated that Howell's bid does not become lower than Fasco's until the fourth month of the second option year. The agency concluded that this fact was sufficient to compel rejection of the bid as materially unbalanced because, if Howell's bid were accepted but the second option year not exercised for some reason, the government would incur a substantially greater cost for performance of the 5-month base period and first option year by Howell instead of by Fasco. (Fasco's combined price of $651,983.38 for these two periods contrasts with Howell's combined price of $751,509.10 for the same elements.)2/ Hence, the Air Force urges that there existed sufficient reasonable doubt that acceptance of Howell's bid would ultimately prove to be in the government's best interest.

The "reasonable doubt" test reflects the long-held view that unbalanced bidding may give rise to irregularities of such a substantial nature that fair and competitive bidding will be affected, see 49 Comp. Gen. 330 (1969), but is a factual determination which varies depending on the particular circumstances of each procurement. Solon Automated Services, Inc., B-206449.2, supra. Thus, in Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542, a mathematically unbalanced bid nevertheless was not found to be materially unbalanced where the bid was substantially lower than the next low bid (a differential of some 44 percent), and the bid would become low during the first of 2-option years. In contrast, in Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al., supra, we found that a firm's mathematically unbalanced bids under two invitations were materially unbalanced where they enjoyed insubstantial advantages in total price over the next low bids and did not become low until into the final option year.

Here, Howell's total bid price, assuming all options are exercised, is some $88,000 lower than Fasco's, a differential of 8 percent. However, as already indicated, Howell's bid price without exercise of the second option year, the period in which Howell's bid becomes low, is nearly $100,000 higher than Fasco's, a differential of 15 percent. Further, if the contract should run for only the

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2/We point out that although Howell's bid for the base period and first option year combined is lower than the government's estimate and all other bids except Fasco's, it is against Fasco's bid, which is next low overall, that Howell's bid must be measured to determine whether the bid is materially unbalanced.

5-month base period, Howell's bid would be more than $54,000 more costly than Fasco's, or a differential of 27 percent. On these facts, therefore, we conclude that the Air Force had sufficient reasonable doubt that acceptance of Howell's bid would actually provide the lowest cost to the government. Crown Laundry and Dry Cleaners, Inc., B-208795.2 et al., supra. Even if, as Howell contends, the Air Force at the present time expects to exercise the options under the contemplated contract, that still does not obviate the correctness of the determination made here to reject Howell's bid as materially unbalanced. Id.; Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD ¶ 632.

The protest is denied.

Harry R. Van Cleve

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General Counsel