



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Ocean Habitability, Inc.

File: B-227304

Date: September 17, 1987

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### DIGEST

1. Contracting agency properly rejected offer as materially unbalanced where the inherent uncertainty of the solicitation's estimated requirements, notwithstanding that the estimate was based on the best information available, combined with extreme skewing of the offered unit prices, create a reasonable doubt whether acceptance of the offer would result in the lowest cost to the government.

2. Solicitation clause prohibiting material unbalancing "as to prices for the basic requirement and the option quantities" is not limited to unbalancing between the base-year price and prices for option years, but also prohibits unbalancing between unit prices for items in the same year. Moreover, unbalancing poses such an obvious danger to the integrity of a price competition that the rejection of a materially unbalanced offer is required.

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### DECISION

Ocean Habitability, Inc., protests the rejection of its offer under request for proposals (RFP) No. N00123-86-R-0972, issued by the Naval Regional Contracting Center, Long Beach, California. The RFP contemplated award of a requirements contract, based on fixed unit prices, to provide supplies and services to repair and maintain shipboard heat exchangers for a base year plus two option years. The Navy rejected the protester's low offer upon determining that its unit prices were materially unbalanced because there was a substantial likelihood that acceptance of the offer would not result in the lowest cost to the government. The protester argues that the Navy's determination was unreasonable and inconsistent with the terms of the RFP which, as construed by the protester, did not prohibit unbalanced unit prices.

We deny the protest.

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The RFP contained 41 line items for each year, to be separately priced, that mainly described 9 services for estimated quantities of various sizes of equipment. The RFP also contained price factors for estimated quantities of labor to perform additional work required by the Navy or occasioned by a delay or disruption not caused by the contractor. The RFP's evaluation criteria provided for a single award to the responsible offeror proposing the lowest price, and included the clause in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.217-5 (1985), warning that the government may reject an offer if it is materially unbalanced "as to prices for the basic requirement and the option quantities." The clause defined an unbalanced offer as one offering prices that are significantly less than cost for some work and significantly overstated for other work.

The protester's offer, at an evaluated total price of \$365,112 for all 3 years, was the lowest of six offers submitted, and was approximately \$14,300 less than the next lowest offer. The protester offered nominal prices of \$1 for eight of the line items in each year. Four of those items involved services on an estimated quantity of one large heat exchanger, for which the second lowest offer included prices totaling \$14,660. The other \$1 items were the offered straight-time and overtime labor rates for additional work; the second lowest offer included rates of approximately \$26.50 and \$33, respectively, for these items, resulting in an evaluated price difference between the two offers of nearly \$63,000 for these items in the base year alone. The protester priced most of the other items significantly higher than the other offerors or in a manner consistent with the highest priced offers.

The contracting officer determined that Ocean Habitability's offer was materially unbalanced, and rejected the offer without discussions. The contracting officer proposes awarding the contract to the next lowest offeror.

Ocean Habitability basically concedes that its offer was mathematically unbalanced. The critical issue is whether the offer was materially unbalanced such that there is a reasonable doubt that acceptance of the offer would result in the lowest ultimate cost to the government.<sup>1/</sup> See SMC Information Sys., B-224466, Oct. 31, 1986, 86-2 CPD ¶ 505. Consideration of the materiality of unbalancing begins with a determination of the accuracy of the RFP's estimate of the

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<sup>1/</sup> We note that while this generally is not a concern in negotiated procurements, it is where, as here, cost or price constitutes the primary basis for award. See Merrett Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 CPD ¶ 259.

anticipated quantities being priced, since an unbalanced offer will only become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced items. See Edward B. Friel, Inc. et al., 55 Comp. Gen. 488 (1975), 75-2 CPD ¶ 333.

Generally, a determination that the government estimate is not sufficiently accurate to assure award at the lowest cost to the government requires cancellation of the solicitation and reissuance of the RFP with an appropriately revised estimate. See Edward B. Friel, Inc. et al., 55 Comp. Gen. 488, supra. In some cases, however, the agency's estimate is based on the best information available, but still cannot be relied upon to reasonably assure that a mathematically unbalanced bid will be least costly. See TWI, Inc., 61 Comp. Gen. 99 (1981), 81-2 CPD ¶ 424. In such a case, a mathematically unbalanced offer is materially unbalanced and may be rejected where, as here, the solicitation contains the FAR unbalanced bidding clause at 48 C.F.R. § 52.217-5. See id.; Inland Service Corp., B-198925, Oct. 17, 1980, 80-2 CPD ¶ 292. We find that the Navy had a reasonable and proper basis to reject Ocean Habitability's mathematically unbalanced offer as being materially unbalanced.

The Navy reports, and the protester does not dispute, that the RFP's estimate was as accurate as possible based on historical data and projections of future ships' activities and repair requirements, but that the scope of the RFP's requirements--to perform work on approximately 10 classes of ships at 3 home ports--combines with several factors to create a large element of uncertainty as to the accuracy of the estimate. The two main uncertain factors are unforeseeable changes in ships' movements and home ports, and the inability to predict the preventive maintenance and service the systems actually will receive from the ships' crews. In addition, the Navy explains that emergency repairs sometimes have to be performed on ships from other home ports. The Navy points out that during the previous year the actual requirements exceeded estimated requirements by 50 percent, and its actual requirement for one item exceeded the estimated quantity for that item by 79 percent. Although the Navy increased the current estimate for that item by 85 percent, the Navy points out that an increase of only 9 percent for the same item during the base year would render Ocean Habitability's offer more costly than the next lowest offer.

We find the Navy's position persuasive, and thus agree that acceptance of Ocean Habitability's offer would not reasonably assure performance at the lowest price. Our review

indicates that the protester's prices, aside from the nominal prices, often were significantly higher than the next lowest offeror's such that increased requirements for one or a few services would likely result in the protester's offer not being less costly.

The protester argues that the determination that its offer is materially unbalanced is based on unreasonable speculation as to what items might be increased. We disagree. While there necessarily is some element of speculation involved in predicting the possible effect of a mathematically unbalanced bid, all that is required is the existence of a reasonable doubt. The inherent uncertainty of the RFP's estimate (notwithstanding that the estimate was as accurate as possible), combined with the extreme skewing of the protester's unit prices, clearly creates a reasonable doubt that the offer would result in the lowest cost to the government.

The protester also argues that the RFP did not authorize rejection of its offer since the cited clause only covered unbalancing between the base and option years, and did not expressly prohibit unbalancing between unit prices; in this regard, Ocean Habitability bid the same price for the base year and each option year. Although the language of the clause--providing for rejection of offers that were materially unbalanced "as to prices for the basic requirement and the option quantities"--may be susceptible of a restrictive reading, we previously have held that this language is not limited in this manner, and prohibits unbalancing of prices within the same year. TWI, Inc., 61 Comp. Gen. 99, supra; Inland Service Corp., B-198925, supra. In any case, no matter how the clause is interpreted, in recent decisions we have explained our broader view that unbalancing may give rise to an irregularity of such a substantial nature that rejection of an unbalanced offer may be necessary to preserve the integrity of the competition. See generally Nebraska Aluminum Castings, Inc.--Second Request for Reconsideration, B-222476.3, Nov. 4, 1986, 86-2 CPD ¶ 515, and cases cited therein.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel