



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: All Star Maintenance, Inc.

File: B-231618

Date: August 25, 1988

---

### DIGEST

1. Bidder's failure to submit standard certifications and representations with the bid at bid opening does not affect the firm's material obligations and therefore does not render the bid nonresponsive and may be corrected after bid opening.

2. A bid is not mathematically and materially unbalanced unless there is reasonable doubt that award will result in the lowest overall cost to the government.

3. The General Accounting Office will not review a contracting officer's affirmative responsibility determination absent a showing of possible fraud or bad faith, or that definitive responsibility criteria in the solicitation were not met.

4. Incumbent contractor's protest that contracting activity's conflicting advice regarding the firm's performance obligation during extension period of its contract affected the validity of the follow-on competition is denied, where neither any substantive effect on such competition, nor prejudice to protester, is discernable from the record.

---

### DECISION

All Star Maintenance, Inc., protests award to any other bidder under invitation for bids (IFB) No. F30635-88-B-0006, issued as a total small business set-aside by the Department of the Air Force for the maintenance of military family housing units at Griffiss Air Force Base, New York. All Star, the incumbent contractor, contends that: (1) Budlong Petroleum, Inc., the apparent low bidder, failed to submit the required representations and certifications as part of its bid, thereby making the bid nonresponsive; (2) Budlong's bid is unbalanced; (3) neither Budlong nor the second and

043091

third low bidders can demonstrate the previous experience in the maintenance of military family housing required by the solicitation; (4) the second low bidder, Snead and Associates, is neither a small business nor a small disadvantaged business; and (5) the solicitation should be canceled because after bid opening the contracting agency changed its interpretation, from the one relayed to All Star earlier, of the firm's duty to perform furnace preventive maintenance service (PMS) during the extension period on the current contract, and All Star had relied on the initial advice in bidding in the current procurement.

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

All Star first argues that Budlong's failure to submit the required representations and certifications as part of its bid renders the bid nonresponsive. The Air Force argues that this omission by Budlong was properly considered a minor informality and corrected after bid opening, since the certifications and representations in the solicitation were standard for service contracts.

The Air Force is correct that Budlong's failure to submit the standard certifications and representations with its bid does not require rejecting the bid as nonresponsive. The test for responsiveness is whether the bid as submitted represents an offer to perform, without exception, the exact thing called for in the IFB, so that upon acceptance, the contractor will be bound to perform in accordance with all the invitation's terms and conditions. Atlas Disposal Systems, Inc., B-229714, Feb. 23, 1988, 88-1 CPD ¶ 186. The failure to submit the certifications in issue does not affect the bidder's material obligation and, therefore, may be corrected after bid opening. See Gracon Corp., B-224344, July 7, 1986, 86-2 CPD ¶ 41.

All Star also argues that Budlong's bid is unbalanced, with prices for cleaning and appliances below cost while prices for vanities and painting of cellular stairs are too high. The Air Force responds that the prices noted are not "mathematically" unbalanced because they are comparable to the other bids received. The Air Force also points out that the allegedly inflated costs for vanities and painting are still below the government estimates. Further, the Air Force argues, regardless of the low bidder's prices on the protested items, the bid is still not "materially" unbalanced because, based on the government's estimate of its requirements, acceptance of the bid clearly will result in the lowest ultimate cost to the government.

There is a twofold nature to bid unbalancing. First, the bid must be evaluated mathematically to determine whether each item carries its share of the cost of the work specified for that item as well as overhead and profit. If the bid is based on nominal prices for some of the work and enhanced prices for other work, it is mathematically unbalanced. The second part of the test is to evaluate the bid to determine whether award to a bidder that has submitted a mathematically unbalanced bid will result in the lowest overall cost to the government. If award to a party that submits a mathematically unbalanced bid will not result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. Landscape Builders Contractors, B-225808.3, May 21, 1987, 87-1 CPD ¶ 533. The key to this latter determination is the validity of the government estimates, for it is those estimates upon which bids are evaluated. Thus, unless it can be shown that the government estimates are invalid, a low evaluated bid cannot be rejected merely because it is mathematically unbalanced. Id.

We deny this aspect of the protest. First, we do not find Budlong's bid mathematically unbalanced. Second, in any event, All Star does not provide any indication as to why it thinks Budlong's bid is materially unbalanced. As All Star does not dispute the validity of the government's estimates, we have no reason to think that award to Budlong, based on the firm's evaluated total price, would not result in the lowest ultimate cost to the Air Force. See Atlas Disposal Systems, Inc., B-229714, supra.

All Star next argues that none of the three lower bidders possesses the requisite experience in maintenance of military family housing as required under the solicitation.

We dismiss this aspect of the protest. The Air Force has informed us that, based on a preaward survey, Budlong has been determined to be responsible.<sup>1/</sup> We will not review a contracting officer's affirmative responsibility determination absent a showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. Skyline Products--Request for Reconsideration, B-231775.2, Aug. 11, 1988, 88-1 CPD ¶ \_\_\_\_\_. All Star has not alleged bad faith or fraud and, as the Air Force pointed out in its report in response to the protest, experience in the maintenance of military family housing was

---

<sup>1/</sup> At the time the protest was initially filed the preaward survey was being conducted and a determination of responsibility regarding Budlong had not been made.

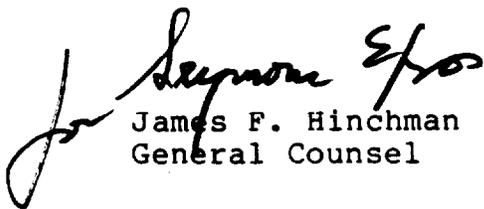
not a definitive responsibility criterion in the solicitation. In view of this finding, we need not consider All Star's challenge to the other two bidder's since neither is in line for award.

Finally, the protester argues that the solicitation should be canceled because All Star bid with a certain understanding, relayed to it by Air Force personnel, regarding the firm's duty to perform PMS during the extension period of its contract, which directly preceded the IFB's stated performance period, but was given different advice after bid opening. According to All Star, the initial erroneous advice affected its bid and thus its competitive standing under the IFB.

The Air Force responds that All Star may have been given conflicting advice before and after bid opening as to its obligations under the contract extension, but that All Star had been told that if it wanted a definitive response it should submit the question on furnace PMS in writing; the Air Force states that All Star never made such a written inquiry prior to bid opening. Anyway, the Air Force notes, whatever problem the conflicting advice might have caused All Star, the agency cannot see how it might have had an impact on the results of the competition.

We deny this aspect of All Star's protest. The record on All Star's protest discloses no way All Star could have been prejudiced in the competition by any reliance on advice about its obligations during the extension period. We also point out that the extent of All Star's PMS performance obligation during the extension period is a matter of contract administration, which our Office does not review. See 4 C.F.R. § 21.3(m)(1) (1988).

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel