

McArthur



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robertson & Penn, Inc.

File: B-234082

Date: April 10, 1989

DIGEST

1. A low bid for a requirements type contract is not materially unbalanced unless it can be shown that the government's estimates are so unreliable that award to the low bidder will not result in the lowest cost to the government.

2. Where despite evidence of unbalancing in individual line items, protester presents no evidence that awardee's total bid for any performance period is unbalanced, and where agency expects to exercise options, bid is not materially unbalanced.

DECISION

Robertson & Penn, Inc., protests the award of a contract to Broad Avenue Laundry and Tailoring, Inc., under invitation for bids (IFB) No. DABT01-88-B-1018, issued by the Department of the Army for laundry services at Fort Rucker, Alabama. The protester argues that the agency should have rejected Broad Avenue's bid as nonresponsive because the bid was mathematically and materially unbalanced.

We deny the protest.

On July 19, 1988, the Army issued the IFB for furnishing all labor, supervision, and transportation (and associated equipment and supplies) to perform laundry services at a government-owned, contractor-operated facility at Fort Rucker for an 8-month base period with two 1-year options. The IFB required bidders to price 141 laundry items, with a total of 423 Contract Line Items Numbers (CLINs) over the three contract periods.

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The solicitation provided for a single award of a fixed-price requirements contract to the low, responsible bidder. The IFB contained the Federal Acquisition Regulation clause § 52.217-5 (FAC 84-37), providing for evaluation of options and retaining the agency's right to reject any bid determined to be materially unbalanced as to prices for the basic requirement and option quantities.

The agency received five bids on December 23. Although the protester submitted the low bid for the base period, \$326,912 versus Broad Avenue's bid of \$332,136, Broad Avenue submitted the low bid overall for the base period plus option years, \$1,322,119 versus \$1,346,609. The Army decided to award the contract to Broad Avenue. On January 9, 1989, Robertson filed this protest against acceptance of Broad Avenue's bid.

The protester contends that Broad Avenue's bid is unbalanced.^{1/} In support of this contention, the protester notes that Broad Avenue bid 40 cents on CLIN 0050, chemical coats, with an estimated quantity of 2,005 for the base year, and \$5 on CLIN 0090, chemical trousers, with an estimated quantity of 67 for the base year. Robertson states that the estimate for CLIN 0090 is obviously wrong, since a contractor must launder the same number of trousers as coats; the agency does not dispute that the estimate for CLIN 0090 was in error.^{2/}

In cases involving requirements contracts, consideration of the materiality of unbalancing begins with a determination of the accuracy of the RFP's estimate of the anticipated quantities being priced, since an unbalanced bid will only become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced

^{1/} In its initial protest, Robertson also alleged that Broad Avenue's bid was invalid because Mary Hancock, who signed the bid as "President," is actually a Vice President. The agency has presented material to contradict this contention, and the protester has declined to address this issue further. Under these circumstances, we consider that the protester has abandoned this protest ground. See East/West Industries, B-228301, Dec. 21, 1987, 87-2 CPD ¶ 611.

^{2/} Also, for the option periods, Broad Avenue bid 30 cents and 40 cents for estimated quantities of 3,027 and 3,118 coats, respectively, and 50 cents and 35 cents for estimated quantities of 3,105 and 3,198 trousers, respectively. There is no evidence that these estimates are erroneous.

items and/or a lesser quantity of the underpriced items. Our Office has held that where bidders submit unbalanced bids and where estimated quantities are materially defective, such that it is not clear that award to the low bidder would result in the lowest cost to the government, the solicitation generally should be canceled and reissued. Edward B. Friel, Inc., et al., 55 Comp. Gen. 488 (1975), 75-2 CPD ¶ 333.

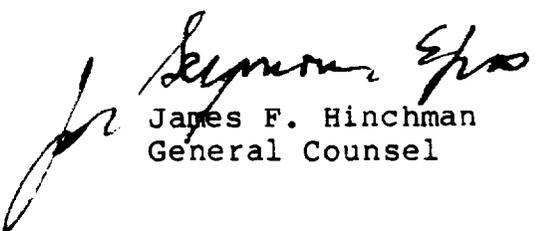
In the instant case, the protester has submitted no evidence that estimates for CLINs other than 0090 are incorrect; further, with an accurate estimate of 2,027 trousers for CLIN 0090, and if Broad Avenue's bid is adjusted upward accordingly by \$9,800, its bid for the base year plus options becomes \$1,331,919, still less than the protester's similarly adjusted bid of \$1,347,392. The protester speculates that with the estimate for CLIN 0090 in error, there may be other as yet unrecognized errors in the estimated quantities for other CLINs. However, the protester, who is the incumbent laundry contractor at Fort Rucker, raised no challenge to the estimates prior to bid opening and, apart from CLIN 0090, raises no specific challenge now. As Broad Avenue argues, the protester, as the incumbent contractor, is as well placed as any other party to identify any such errors if they do exist; yet, the protester has made no such showing. The protester has therefore failed to meet its burden in this regard. In the absence of any evidence that any CLIN, apart from 0090 is in error, we have no basis for concluding that Broad Avenue's bid is materially unbalanced as between CLINs, since that bid represents the lowest overall cost to the government under the accurately stated requirements.^{3/}

^{3/} In addition, the protester points to other aspects of Broad Avenue's pricing as evidencing unbalancing between CLINs. For example, Broad Avenue bid \$1.00 on CLIN 0006, orthopedic coats, which must be washed, dried and folded, while bidding only 65 cents on CLIN 0009, green operating coats, which must be pressed in addition to being washed, dried and folded. The protester asserts that for these and similar items, it logically should cost more to iron than just to dry and fold. It is clear from the record, however, that in many of the examples cited by the protester, Broad Avenue has simply structured its bid to reasonably take advantage of economies of scale. For example, CLIN 0009 contains an estimated quantity of 4,453, while CLIN 0006 contains an estimated quantity of 100.

The protester also points to some 33 items as evidencing unbalancing between the base period and option years. Some of these items show a sharp increase in the second option year; some are priced highest in the first option year; some show a sharp decrease between the base period and option years. However, for the 8-month base period, representing 25 percent of the contract period, Broad Avenue's bid of \$341,936 (adjusted) amounts to 25 percent of its total bid for the contract period; its bids for the option periods show only a slight increase, from \$491,064 for the first option year to \$498,919 in the last option year. We therefore find no evidence of front-loading in Broad Avenue's bid.

Except where a bid contains extreme front-loading, our analysis of whether bids are materially unbalanced between base period and option years has hinged upon whether the agency reasonably anticipated exercise of the option. Professional Waste Systems et al., 67 Comp. Gen. 68, supra. Here, the need for laundry services is generally stable and recurring. There is nothing in the record before us to show that there is any doubt that the agency intends to and will exercise the option, insuring that Broad Avenue's bid will ultimately provide the lowest cost to the government (beginning in the first option year). Therefore, even accepting the protester's contention that Broad Avenue's bid is unbalanced to some extent, the protester has not shown that the bid is materially unbalanced.

The protest is denied.



James F. Hinchman
General Counsel