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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Engineered Systems, Inc.
File: B-236950
Date: December 21, 1989

DIGEST

A bid which incorporates a high price for preventative maintenance, for which substantial payment may be received early during contract performance, and a substantially lower price for corrective maintenance is not mathematically unbalanced, nor would such payment be tantamount to advance payment, where the government intended the contractor to perform a substantial amount of preventative maintenance in order to minimize the time that facilities are nonoperational, and the awardee's pricing is consistent with the government estimate.

DECISION

Engineered Systems, Inc. (ESI), protests the award of a contract to Motorola, Inc., under invitation for bids (IFB) No. DTCG89-89-B-70032, issued by the United States Coast Guard. The protester contends that the awardee's low bid should be rejected because it is mathematically and materially unbalanced, and will result in improper advance payments.

We deny the protest.

On July 26, 1989, the contracting activity issued the IFB for maintenance services for the Coastal Voice Distress Network for the Seventeenth Coast Guard District, Alaska. This emergency communications systems, which the Coast Guard describes as "the '911' of the sea," includes remote sites whose electronic equipment is powered by propane-fueled generators.

The solicitation divided the services to be provided under the contract into preventative maintenance and corrective maintenance, and required separate prices for each of these components for a base year and for 4 option years. The agency received three bids, one of which was nonresponsive.

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The responsive bids and the government estimate for the base year are as follows:

	<u>Government Est.</u>	<u>Motorola</u>	<u>ESI</u>
Preventative Maintenance	\$ 734,301	\$743,448	\$103,378
Corrective Maintenance	<u>355,178</u>	<u>166,366</u>	<u>807,508</u>
Total	\$ 1,089,479	\$909,814	\$910,886

Motorola's total bid was lower than ESI's in every year, with a total bid of \$5,031,956 for the base year plus 4 option years, versus ESI's total bid of \$5,238,217, and the government estimate of \$6,651,376.

Since Motorola was the apparent low bidder, the contracting agency reviewed Motorola's bid and made a determination of price reasonableness for the base year and the 4 option years. Prior to award, ESI protested to our Office that Motorola's bid was mathematically and materially unbalanced and will result in prohibited advance payments and, therefore, Motorola should not be given the award. The agency awarded the contract to Motorola while the protest was pending, based on a determination of urgent and compelling circumstances which significantly affect the interests of the government.

The protester contends that Motorola's bid is mathematically unbalanced because its price for preventative maintenance is substantially more than is required, and its bid for corrective maintenance is substantially less than is necessary. ESI alleges that this high price for preventative maintenance will result in Motorola receiving large sums of money in advance of realizing its full costs. ESI explains that under the contract payment terms, Motorola will be able to visit each site within the first month of the contract and then bill the Coast Guard for one half of the total yearly preventative maintenance price. According to ESI, Motorola's price represents 10 times the actual cost of visiting each site for the first time and performing the preventative maintenance. Specifically, the protester alleges that the total cost of the first visits to all sites, exclusive of overhead and general administrative expenses, will be between \$32,000 and \$40,000 (plus \$160,000 for fuel which ESI says will not be needed the first time), whereas one half of Motorola's price for preventative maintenance is more than \$370,000. ESI claims that the approximately \$330,000, which exceeds actual costs, represents unbalancing and must be considered an advance payment to the contractor. We disagree with the protester's reasoning.

A bid which is materially unbalanced must be rejected as nonresponsive Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. A bid is materially unbalanced if the bid is based on nominal prices for some items and enhanced prices for other items, and there is reasonable doubt that an award based on the bid will result in the lowest cost to the government. Atals Disposal Sys., Inc., B-229714, Feb. 23, 1988, 88-1 CPD ¶ 186. Here, the number of preventative maintenance visits is fixed, as is the price for the corrective maintenance. Motorola's total fixed-price bid for all the work under the IFB is lower than ESI's bid in the base year, and in each of the option years. Thus, there is no basis to conclude that award to Motorola will not result in the lowest cost to the government.

We have recognized, however, that in certain circumstances a bid which is grossly unbalanced should be rejected, even if low, since payments made under a contract awarded pursuant to such a bid would amount to improper advance payments. Canaveral Maritime, Inc., B-231857.4; B-231857.5, May 22, 1989, 89-1 CPD ¶ 484. Acceptance of such a bid which provides funds to the contractor early in contract performance, in excess of the basis of value received by the government, is detrimental to the competitive bidding system since, in essence, it gives the bidder the advantage of the use of interest-free money. F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573.

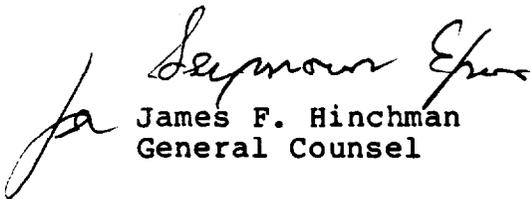
Here, we do not find that Motorola's bid is mathematically unbalanced. The price allocation between preventative and corrective maintenance in Motorola's bid closely approximates the government estimate. The government estimate was based on the maintenance costs under the previous contract. To these maintenance cost figures, the agency added an estimated annual inflation factor and a factor to estimate the cost impact of increased requirements under the current solicitation. The contracting activity specifically anticipated and desired the price for preventative maintenance to constitute the majority of the contract price. The agency states that the statement of work was designed to encourage contractors to perform regularly scheduled preventative maintenance in order to eliminate dispensable corrective maintenance.

The protester disputes that enhanced preventative maintenance will reduce the amount of corrective maintenance, and argues that as the incumbent it is in the best position to know the actual costs of this contract. However, the agency is entitled to determine its minimum needs, and the agency's determination that its needs warrant primary

emphasis on preventative maintenance is reflected in its cost estimate, with which Motorola's bid is consistent. The agency reasonably determined that a high level of preventative maintenance would achieve its primary goal of reliable operation of the network with a minimum of corrective maintenance and associated operational down time. We also note that ESI's argument is based in large measure on the timing of the preventative maintenance visits, which are not scheduled under the IFB, and which require agency scheduling approval. Thus, the agency is in a position to control the timing of the preventative maintenance visits, and the payments associated with the visits, which are made after completion of the visits.

ESI also argues that the Coast Guard will not be protected if Motorola fails to perform in accordance with the contract because the monetary penalty for nonperformance of the corrective maintenance is insignificant, and, therefore, the government will bear the costs of having sites out of service. This allegation concerns an alleged apparent solicitation impropriety which is untimely under our Bid Protest Regulations since it was first raised after bid opening. 4 C.F.R. § 21.2(a)(1) (1989). Moreover, to the extent that ESI appears to be challenging Motorola's responsibility we will not review the contention. Our Office does not review an affirmative responsibility determination absent a showing that such a determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f); Urethane Prods. Corp., B-234694, May 25, 1989, 89-1 CPD ¶ 508. Here, none of these exceptions has been alleged.

The protest is denied.

 James F. Hinchman
General Counsel