



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: OMSERV Corporation
File: B-237691
Date: March 13, 1990

J.A. Roberts, for the protester.
Colonel Herman A. Peguese, Department of the Air Force, for the agency.
Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Low bid is not unbalanced where there is no evidence that bid contained enhanced prices.
2. Allegation that bid is nonresponsive because the awardee's allegedly unreasonably low price for one line item indicates that awardee will not provide all the services required under this line item is denied since the awardee did not take any exception to the requirement and, even if its bid was below cost in this respect, it would not be legally objectionable.

DECISION

OMSERV Corporation protests the award of a contract to CPL Enterprises, under invitation for bids (IFB) No. FO4609-89-B-0021, issued by the Air Force for military family housing maintenance at George Air Force Base. OMSERV asserts that CPL's bid is unbalanced and should be rejected as nonresponsive. We deny the protest.

The IFB, issued on July 11, 1989, provided, as amended, for a 9-month base period and 2 option years, with award to be based on the total bid for the base period plus both option periods. Within each period, a price was required for one fixed quantity contract line item (Clin), No. 0001, for specified monthly maintenance service, and for six requirements Clins for such items as major painting, appliance replacement, and lawn maintenance, for which estimated quantities were provided in the IFB.

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Sixteen bids were received at the October 6 bid opening, of which CPL's bid of \$3,923,886 was low, and OMSERV's bid of \$4,129,385 was next low. CPL's bid was evaluated as low and award was made to CPL during the pendency of this protest based on an urgency determination. CPL's bid included a base period price of \$616,095 for Clin No. 0001, and a price for each option year of \$821,460 for this Clin. OMSERV's price for Clin No. 0001 was \$632,727 for the base period, \$766,644 for option year 1 and \$773,316 for option year 2. The IFB included a requirement that, as part of Clin No. 0001 for the base period, an existing job-order backlog of up to 600 orders be performed. CPL's prices for most of the estimated quantity Clins were lower than OMSERV's prices.

The thrust of OMSERV's argument is that since George Air Force Base is scheduled to be closed at the end of the second option year, there is a substantial probability that the estimates provided for the estimated quantity Clins are excessive. OMSERV hypothesizes that since the services in question pertain primarily to quarters refurbishment resulting from changes of occupancy, these requirements will diminish as staff transfers to the base diminish in contemplation of the base closing. OMSERV contends that CPL has taken improper advantage of this likelihood by enhancing its price for Clin No. 0001, for which a total fixed price is bid, and by reducing its prices for the estimated quantity items. OMSERV hypothesizes that if there is a 50 percent decrease in all indefinite quantity Clin orders during the base year, a 60 percent decrease in option year 1, and a 100 percent reduction in year 2, then its actual total price will be \$8,553 lower than CPL's actual price. Accordingly, OMSERV contends that CPL's bid should be rejected as unbalanced. OMSERV also contends that since CPL's bid for Clin No. 0001 contains the same monthly price for the base year as for the option years, CPL has not provided for the required backlog reduction, and therefore its bid should be found nonresponsive.

Before a bid can be rejected as unbalanced, it must be found both mathematically and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. Where there is a reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. Northwest Cleaning Serv., B-234780, May 31, 1989, 89-1 CPD ¶ 523.

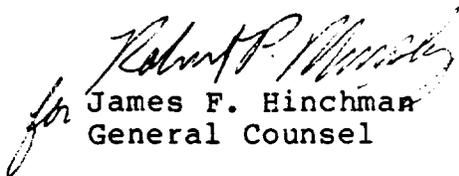
Here, we find no basis to conclude that CPL's bid is mathematically unbalanced. OMSERV's argument is based on a

simple comparison of its costs, prices and experience with CPL's. However, bid pricing involves subjective business judgments and we have held that comparison of a competitor's prices with one's own prices is not by itself sufficient to establish price enhancement or that a bid is unbalanced. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42; Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609. With respect to Clin No. 0001, the only Clin for which OMSERV argues that CPL has enhanced its price, both OMSERV and CPL were below the government estimate, which was \$846,900 for a full year. In addition, of the 16 bidders, only OMSERV submitted a lower price than CPL for Clin No. 0001 for a full year, with prices for all bidders averaging more than \$1 million for this Clin. Therefore, we do not view CPL's bid as containing enhanced prices for any Clin; accordingly, CPL's bid is not mathematically unbalanced because a bid may not be found mathematically unbalanced absent evidence that it contains prices which are overstated. Surface Technologies Corp., 68 Comp. Gen. 289 (1989), 89-1 CPD ¶ 233.

OMSERV has also made the anomalous argument that while CPL's bid for Clin No. 0001 is enhanced, it is too low because the monthly rate is the same for the base and option years, even though there is an additional requirement under this Clin for job-order backlog reduction during the base year. OMSERV hypothesizes that this backlog reduction will require \$20,000--\$30,000 in additional costs to accomplish and, therefore, asserts that CPL's bid is nonresponsive because CPL's pricing shows that it will not provide the required backlog reduction.

The simple answer is that CPL has not taken any exception to the backlog reduction requirement, and there is no basis to find its bid nonresponsive in this respect. As we stated above, a bidder's pricing strategy entails business judgments, and to the extent that OMSERV is contending that CPL's bid on Clin No. 0001 is below cost during the base period, this provides no basis for sustaining a protest since submission of a below-cost bid is not legally objectionable. Northwest Cleaning Serv., B-234780, supra.

The protest is denied.


James F. Hinchman
General Counsel