



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** District Moving & Storage, Inc.; Todd Van & Storage, Inc.; Eureka Van & Storage Co., Inc.

**File:** B-240321; B-240321.2; B-240321.3

**Date:** November 7, 1990

Patricia H. Gray, Esq., for District Moving & Storage, Inc., Nello M. Lavorini for Todd Van & Storage, Inc., Adrien V. Cote for Eureka Van & Storage Co., Inc., the protesters. John G. McJunkin, Esq., Mays & Valentine, for Commercial Transfer Systems, Inc., an interested party. Michelle Harrell, Esq., General Services Administration, for the agency. C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protests that proposed awardee's bid is unbalanced will not be considered where the protests constitute untimely challenge to solicitation's lack of straight time and overtime estimates for line items.
2. A bid in which the bidder submitted high prices for straight time services as opposed to overtime services was properly rejected as unbalanced where agency had reasonable doubt that bid represented lowest ultimate cost to the government.

### DECISION

District Moving & Storage, Inc. and Todd Van & Storage, Inc. protest that the bid submitted by Commercial Transfer Systems, Inc. (CTS) in response to invitation for bids (IFB) No. 3FBG-W-T2-R-5061, issued by the General Services Administration, is unbalanced and should be rejected. Eureka Van & Storage Co., Inc., whose bid under the same IFB the agency has rejected as unbalanced, protests the agency's determination not to consider its bid.

We dismiss and deny the protests.

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The agency issued the solicitation on June 1, 1990, for primary and back-up fixed-price requirements contracts for transportation and related moving services for federal agencies in the Washington, D.C. metropolitan area for a 1-year period, with a 1-year option period. The solicitation provided for award to the lowest aggregate bidders based on straight time and overtime hourly rates submitted for three categories of workers--drivers, laborers and leaders. In essence, the IFB provided for award to the low bidder based on simply adding up the hourly rates for straight time and the hourly rates for overtime for the base and option years for the three labor categories.<sup>1/</sup> The IFB did not provide estimates as to the amount of straight time or overtime that would be required, and straight time and overtime were therefore to be evaluated as equal in cost impact under the evaluation methodology.<sup>2/</sup> The solicitation warned bidders that the agency could reject any bid that was materially unbalanced as to price for individual items of service and defined "unbalanced" as a bid in which prices submitted were significantly less than cost for some services and significantly overstated for other services.

On July 2, the agency received eight bids; the first four bids, for the base year, were as follows:

	<u>CTS</u>	<u>Eureka</u>	<u>District</u>	<u>Todd</u>
Straight time per hour				
vehicle with driver	\$15.00	\$19.00	\$11.50	\$13.92
laborers	10.76	- 11.50	11.00	9.31
leaders	9.07	11.50	11.50	12.72
Overtime per hour				
vehicle with driver	\$12.00	\$9.00	\$11.60	\$18.56
laborers	9.18	9.00	11.10	13.10
leaders	<u>9.18</u>	<u>9.00</u>	<u>11.60</u>	<u>14.25</u>
Base year bid	\$467.22	\$488.50	\$495.20	\$561.61
(total of all personnel)				

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<sup>1/</sup> The IFB set forth the estimated number of personnel for evaluation purposes as follows: drivers, five; laborers, 13; leaders, four.

<sup>2/</sup> We find, however, based on the IFB's schedule and statement of work, that, despite the lack of estimates, it was obvious that the agency would order more straight time work than overtime work.

All four, except Todd, whose bid was \$579.45 for the option year, bid the same for the base and the option years. The low aggregate bids were therefore: CTS, \$934.44; Eureka, \$977.00; District, \$990.40 and Todd, \$1,141.06.

On July 5, District filed a protest with our Office, alleging that the two low bids, submitted by CTS and Eureka, were materially unbalanced; Todd filed a similar protest with the agency. On August 10, the agency advised our Office that it had determined the CTS bid to be responsive and eligible for award but that it considered the Eureka bid to be materially unbalanced. Todd and Eureka then filed protests with our Office.

The CTS bid

District and Todd argue that CTS did not bid an overtime rate that carried its share of the cost of work, offering an overtime rate significantly lower (14 percent) than its straight time rate and less than the Service Contract Act requires CTS to pay. District, as the incumbent contractor, points out that overtime has historically amounted to less than 5 percent of all hours ordered; unless this rate of usage triples, an eventuality that no one anticipates, District contends that the pricing structure offered by CTS will not result in the lowest ultimate cost to the government. Todd's protest is also premised on the assumption that the agency will in fact order a "limited" amount of overtime.

We view the District and Todd protests as challenges to the apparent and obvious lack of estimates in the IFB concerning the amount of straight time and overtime work to be performed. As such, they are untimely.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1990) are intended to provide for expeditious consideration of procurement actions without unduly disrupting the government's procurement process. See Sharon R. Riffe-Cobb--Recon., B-223194.2 et al., June 25, 1986, 86-2 CPD ¶ 9. To this end, they require that protests based upon alleged improprieties apparent on the face of a solicitation be filed prior to the time set for bid opening. 4 C.F.R. § 21.2(a)(1). This requirement is intended to enable the contracting agency to decide an issue while it is most practicable to take effective corrective action where the circumstances warrant. See Ratcliffe Corp.--Recon., B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

While we have previously considered allegations of defective solicitation workload estimates even though the allegation was

first raised after the time set for receipt of offers, see generally Paragon Van Lines, Inc., B-222018.2 June 25, 1986, 86-1 CPD ¶ 591, we generally have done so only where there was no clear evidence that a protester was on notice of the deficiency. Here, Todd, an experienced moving contractor, and District, the incumbent contractor (who knew the amount of overtime work historically performed), knew or should have known that the evaluation methodology (without any estimated quantities of straight time and overtime) used by the agency was seriously flawed and constituted an obvious impropriety on the face of the solicitation. Yet, neither protested prior to bid opening. Todd and District now want us to impose a "limited" or "5 percent" estimate of overtime on the agency for purposes of evaluation of bids and for rejecting the CTS bid. We will not do so. Their delay in raising this issue, which is material to their protest basis, deprived the agency of the opportunity to consider corrective action, if warranted, before the expenditure of significant time and effort and the exposure of bid prices. We therefore will not entertain their untimely "back-door" challenges to the solicitation's lack of estimates. See Semcor, Inc., B-227050, Aug. 20, 1987, 87-2 CPD ¶ 185.

As to whether CTS' bid is unbalanced, there are two aspects to unbalanced bidding--mathematical unbalancing, where a bid is based on nominal prices for some items and enhanced prices for other items, and material unbalancing, where a bid is mathematically unbalanced and there is a reasonable doubt that an award based on the bid will result in the lowest cost to the government. See USA Pro Co., Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159. The key to this latter determination is the validity of the government estimates, since it is the estimate (multiplied by proposed rates) upon which cost to the government is determined; unless the solicitation estimates are inaccurate, a low evaluated offer generally is not materially unbalanced. See generally Landscape Builders Contractors, B-225808.3, May 21, 1987, 87-1 CPD ¶ 533. Since we will not entertain the protester's untimely challenges to the solicitation's lack of specific estimated quantities for straight time and overtime work, we have no basis to question the acceptability of CTS' bid. However, we are notifying the agency, by separate letter of today to the Administrator of General Services, of the obvious flaw in the solicitation so that the agency may address the matter as appropriate. See DynCorp, B-240980.2, Oct. 17, 1990, 90-2 CPD ¶ \_\_\_\_.

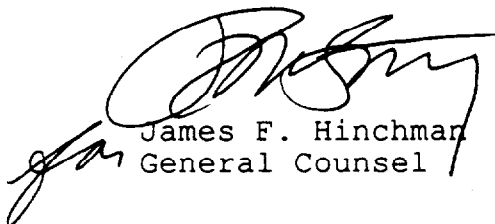
#### The Eureka bid and protest

Eureka contends that the rejection of its bid was improper, based on the RFP definition of unbalancing, which applies to bid prices significantly less than cost for some services and significantly overstated for other services. Eureka alleges

that its straight time rate for drivers includes truck costs at \$6.00 per hour, which account for most of the difference between straight time and overtime.

We find that Eureka's bid contains significantly enhanced prices for straight time, prices nearly 50 percent greater than its overtime bid. Eureka submitted the lowest overtime bid but the fourth highest straight time bid. The protester has furnished no logical reason for allocating all truck costs to the straight time rate for drivers. Nor does Eureka's explanation account for the significant decrease between its straight time and overtime rate for laborers and leaders--22 percent--or the 30 percent reduction in the rate for drivers, apart from truck costs. We also find that the bid is materially unbalanced because if the agency orders slightly more straight time work than overtime work (55 percent to 45 percent), which possibility was reasonably conveyed by the IFB, Eureka would not be low. Therefore, based on the record before us, we find that the agency had a reasonable basis for viewing Eureka's bid as materially unbalanced and refusing to consider it for award.

The protests are dismissed and denied.



James F. Hinchman  
General Counsel