



Comptroller General
of the United States

Washington, D.C. 20548

Mr. G. George

Decision

Matter of: Virginia Manufacturing Company, Inc.
File: B-241404
Date: February 4, 1991

Ann G. Palmer for the protester.
Jeffrey I. Kessler, Esq., and Bridget A. Stengel, Esq.,
Department of the Army, for the agency.
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest filed after award that agency should not have evaluated option prices in determining lowest overall priced proposal is untimely where the solicitation included a clause which stated that option prices would be evaluated and under the General Accounting Office Bid Protest Regulations protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that date.
2. Awardee's offer for basic and option quantities is not materially unbalanced where protester fails to show that the offer contained enhanced prices, that the evaluated option is not reasonably expected to be exercised, and that reasonable doubt exists that award to the firm will result in the lowest ultimate cost to the government.
3. Although protester contends that awardee's offer is unrealistically low and represents a buy-in, since in awarding the contract the agency necessarily determined that the firm was responsible, awardee's alleged below-cost offer is no basis to overturn award.

DECISION

Virginia Manufacturing Company, Inc. protests the award of a contract to Bachman Machine Company, under request for proposals (RFP) No. DAAA09-89-R-1565, issued as a small business set-aside by the Department of the Army for the acquisition of a basic quantity of 250,249 metal ammunition boxes with an option to acquire an additional quantity not to exceed 100 percent of the basic amount. Virginia objects to

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the agency's decision to evaluate prices proposed for option quantities in determining the lowest overall offer. The protester also alleges that Bachman's offer was unbalanced.

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

The RFP was issued on November 6, 1989, for a basic quantity of 235,805 model M548 metal ammunition boxes. By subsequent amendments to the RFP, the basic quantity was initially decreased and thereafter increased to the final quantity of 250,249 boxes. Section B of the solicitation provided for an option quantity of up to 100 percent of the basic quantity. The solicitation also included Federal Acquisition Regulation (FAR) clause 52.217-5, Evaluation of Options (July 1990), which explicitly states in part that offers will be evaluated for purposes of award by adding the total price for the evaluated option to the total price for the basic requirement. The RFP also warned against materially unbalanced offers and advised that offers taking exception to the evaluated option could be rejected as unacceptable. Award was to be made to the technically compliant offeror proposing the lowest evaluated price.

The Army established February 28, 1990, as the closing date for receipt of initial proposals and a total of eight proposals were received by that date. Best and final offers (BAFO) were originally submitted on April 13, and following an amendment clarifying the Army's requirements pertaining to phosphate coating, a second round of BAFOs was requested and received on May 23. Following these submissions, the contracting officer calculated each offerors' proposed pricing by adding the basic and option prices together with transportation costs. After the rejection of one offeror as non-responsible, Bachman was determined to be the low acceptable offeror at a total evaluated price of \$10,052,247.30, with proposed unit prices of \$21.52 for the basic quantity and \$17.60 for the option quantity. Virginia submitted the next low acceptable offer at a total evaluated price of \$10,322,826.96, proposing unit prices of \$20.30 for the basic quantity and \$20.25 for the option quantity. On September 21, the Army awarded a contract to Bachman.

Virginia first contends that the Army should not have included the clause providing for the evaluation of options in the solicitation. According to the protester, there was no justification for its use and the provision was an invitation to manipulation of prices by offerors. Virginia further argues that there is no reasonable likelihood that the option will be exercised and that, therefore, the inclusion of this provision in the solicitation was contrary to FAR § 17.208(c), which calls for a positive determination in this respect as a

precondition to use of the provision. We agree with the agency that this basis for protest is untimely.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that time. 4 C.F.R. § 21.2(a) (1990). Here, the solicitation clearly notified offerors that option quantity pricing was requested and would be evaluated in determining the low offeror. If Virginia believed that this approach was improper, it should have protested this matter before the closing date for receipt of proposals.

The protester next contends that Bachman's offer is mathematically unbalanced because the unit price for the basic quantity is approximately 20 percent higher than for the option quantity. Virginia also alleges that Bachman's offer is materially unbalanced because it is unlikely that the option will be exercised by the Army.

The concept of material unbalancing may apply in negotiated procurements where, as here, cost or price constitutes a primary basis for source selection. An offer is materially unbalanced where: (1) it is mathematically unbalanced, where nominal prices are offered for some of the items and enhanced prices for others; and (2) there exists a reasonable doubt as to whether award based on a mathematically unbalanced offer will result in the lowest cost to the government. Surface Technologies Corp., 68 Comp. Gen. 287 (1989), 89-1 CPD ¶ 233.

The record in this case does not demonstrate that Bachman's offer was mathematically unbalanced. Although there is a disparity between the proposed basic quantity and option quantity unit pricing, there is no indication, nor does Virginia allege, that the higher basic pricing proposed by Bachman is enhanced. An offer is not unbalanced absent evidence that certain prices are overstated. See Dunrite Tool & Die Corp., B-237408, Feb. 23, 1990, 90-1 CPD ¶ 211; IMPISA Int'l, Inc., B-221903, June 2, 1986, 86-1 CPD ¶ 506 (bid not unbalanced in the absence of any showing of overstated prices even though some prices were arguably understated). Virginia points out that its proposed basic quantity pricing was lower than Bachman's. However, this slight difference in price--\$1.22 for an item which is priced around \$20 per unit--does not evidence enhanced prices by Bachman, especially in view of the fact that Virginia holds a prior contract for these items and therefore would presumably incur less start-up

costs.^{1/} Furthermore, reliance by a protester on comparison to its own prices to support its conclusion is simply insufficient to show that another offeror's prices are unbalanced. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

Because the protester has failed to show that Bachman's offer is mathematically unbalanced, we cannot conclude that it is materially unbalanced. In any event, we find that Virginia has not shown that there is a reasonable doubt that award to Bachman will result in the lowest overall cost to the government. In this regard, Virginia argues that the option in its contract for these items has not been exercised, and that therefore, it is unlikely that the Army will exercise the option in Bachman's contract. In response, the Army asserts that the option in the protester's contract was not exercised because of delinquencies in Virginia's performance. Additionally, the Army reports that it has historically exercised all option quantities under other contracts for these items and that the award to Bachman will result in the lowest actual cost even if less than 50 percent of the option quantity is exercised. The Army thus asserts that there is no reasonable doubt that the award will result in the lowest ultimate cost to the government. We have no basis to find otherwise.

Finally, Virginia contends that Bachman's price for the option quantity is so unrealistic it results in a "buy in" for Bachman. The submission of a below-cost offer is legally unobjectionable; whether a contract can be performed at the offered price is a matter of the offeror's responsibility. Hose-McCann Telephone Co., Inc., B-240382.3, Sept. 24, 1990, 90-2 CPD ¶ 252. We will not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith or a failure properly to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5); ALM, Inc., B-255679.3, May 3, 1987, 87-1 CPD ¶ 493. By awarding the contract to Bachman, the Army has necessarily determined this firm to be responsible. Since there is no

^{1/} We note in this connection Section I-1 of the solicitation which states in part:

"Inasmuch as the unit price for the basic quantity may contain starting, load, testing, tooling, transportation or other costs not applicable to option quantities, offerors are requested to take these factors into consideration while setting forth the unit price(s) for the option quantities. The option price is expected (but not required) to be lower than the unit price for the initial quantity."

allegation by Virginia of fraud or bad faith or a failure properly to apply definitive responsibility criteria, we do not consider this issue.2/

Accordingly, the protest is dismissed in part and denied in part.

for 
James F. Hinchman
General Counsel

2/ Virginia also asserts that the agency failed to provide written notice of the apparent successful offeror in accordance with FAR § 15.1001(b)(2), thus preventing Virginia from protesting before award. Failure to provide timely notification does not affect the validity of a contract like this which was otherwise properly awarded. E&T Elecs., Inc., B-238099.2, July 10, 1990, 90-2 CPD ¶ 24.