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

Decision

Matter of: Sanford Cooling
File: B-242423
Date: April 15, 1991

William M. MacNeil for the protester.
David G. Dugan for J&D Services Corporation, an interested party.
Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that low bid must be rejected as nonresponsive because it is unbalanced is denied where despite disagreement concerning the correct estimates of the work to be performed, the low bid remains low in all cases and thus is not materially unbalanced.

DECISION

Sanford Cooling protests the award of a contract to either J&D Services Corporation or Fedserv Industries, Inc., the first and second low bidders, under invitation for bids (IFB) No. N62472-90-B-2119, issued by the Department of the Navy for a contractor to maintain and repair refrigeration and air conditioning equipment at Portsmouth Naval Shipyard, Maine. Sanford alleges that both bidders submitted bids that are materially unbalanced.^{1/}

^{1/} Sanford also protested that both bidders submitted bids that were unreasonably low in price. In addition, Sanford raised a number of protest issues concerning the responsibility of each of the two low bidders, such as whether they had comparable experience and whether they submitted references. The Navy responded to all issues in its protest report and Sanford did not reply to the Navy's response in the comments it submitted. Accordingly, we regard these issues as abandoned and will not consider them. See Logitek, Inc., B-238773, July 6, 1990, 90-2 CPD ¶ 16.

We deny the protest.

The IFB was issued on August 17, 1990, for a contractor to provide maintenance and repair services for air conditioning and refrigeration equipment. The IFB consisted of Lot 1--definite quantity work--and Lot 2--indefinite quantity work. For Lot 1 bidders were to submit a fixed price to perform preventative maintenance services for 12 months at each of the 15 listed locations. Lot 2 was comprised of: line item 0003 for service work, including routine service calls (0003aa), urgent service calls during normal work hours (0003ab), and urgent service calls outside normal work hours (0003ac); line item 0004 for freon evolution; line item 0005 for labor hour work; line item 0006 for material costs and burden (MBR); and line item 0007 for equipment rental costs and burden (EBR). For line items 0003, 0004, and 0005, the IFB gave estimates of the number of orders the government expected to place for the requested service; the contractor was required to submit a unit and aggregate price to perform the service. For line items 0006 and 0007 the bidder was required to include a percentage of the amount specified for these line items by the IFB to cover its burden.

The contract was to be awarded to the responsible, responsive bidder who submitted the lowest bid for Lots 1 and 2 combined.

Nine bidders responded to the IFB. J&D submitted the low bid of \$145,212, FedServ submitted the second-low bid of \$152,835, and Sanford submitted the third-low bid of \$162,785. Sanford protested to the contracting officer on October 9 that the two low bidders submitted bids that were unbalanced and unreasonable in price. After the contracting officer denied the protest, Sanford submitted a protest to our Office.

Concerning J&D, the low bidder, Sanford asserts that for Lot 1--the definite quantity portion of the contract--J&D's bid price of \$48,012 is far in excess of the cost of actually performing this work. Sanford itself priced this work at \$17,760. On the other hand, Sanford alleges that for the indefinite quantity work, J&D bid well below the cost of performing the work; for example, Sanford argues that it is impossible to perform a routine service call for \$70, the amount J&D bid to provide this service. Sanford asserts that J&D intends to subsidize the indefinite quantity work with the excess profits it receives from performing the definite quantity work and thus that the bid is mathematically unbalanced because J&D bid an enhanced price to perform the definite quantity work and a nominal price to perform the indefinite quantity work. Sanford further alleges that J&D's bid is materially unbalanced because if the estimates in the IFB are revised and the Navy uses the actual number of orders

that were placed with Sanford during its performance the prior year (238 routine service calls, 5 emergency service calls during duty hours, 9 emergency service calls during non-duty hours, and 92 freon evolutions), Sanford is in fact the low bidder.

The Navy replies that J&D's bid is not mathematically unbalanced because there is no indication that it is based on nominal prices to perform some line items and enhanced prices to perform other line items. The Navy further argues that even if J&D's bid is mathematically unbalanced, an award to J&D will result in the lowest cost to the government and the bid is thus not materially unbalanced. In this regard, the Navy states that it analyzed the bids using blanket orders from last year. Blanket orders represent the number of orders the government expects to place in a given month and are different from the number of orders the government actually places in a given month. The Navy states that the blanket orders from last year represent the number of orders the Navy expects to place this year, which are: 345 routine service calls, 14 emergency service calls during regular work hours, 19 emergency service calls during off-duty hours, and 93 freon evolutions. According to the Navy, if these figures are used to analyze the bids, J&D remains the low bidder.

Before a bid can be rejected as unbalanced, it must be found both mathematically unbalanced and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the line items and enhanced prices for other line 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. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

Here, it does not appear that J&D's bid is based on nominal prices for some of the work and enhanced prices for other work. While Sanford argues that J&D's bid for the definite quantity work is enhanced because it will not cost \$48,012 to perform the monthly maintenance, Sanford has not presented any information other than its own conclusory statement to support this allegation. With respect to Sanford's reliance on its own bid as determinative of a reasonable price, bid pricing involves subjective business judgments, and 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. *Id.* Further, based on the nine bids received for the Lot 1 work ranging from \$11,730 to \$86,040, J&D's bid of \$48,012 does not appear to be based on enhanced prices for performing the Lot 1 work. In any case, even if we were to conclude that J&D's bid was mathematically unbalanced, our analysis shows that J&D's bid is not materially unbalanced

because an award to J&D will result in the lowest overall cost to the government no matter which estimate is used.

The key to determining whether a bid is materially unbalanced--where a requirements contract is concerned--is the government estimate, for it is that estimate upon which bids are evaluated for cost impact. While there is no requirement that the estimates be absolutely correct, they must be based on the best information available. The estimates must be reasonably accurate representations of the government's anticipated actual needs. All Weather Contractors, Inc., B-217242, July 23, 1985, 85-2 CPD ¶ 71.

Here, in trying to demonstrate that J&D's bid will not result in the lowest cost to the government, Sanford charges that the Navy should have used Sanford's actual performance figures from last year to make this determination and that by using these figures, Sanford becomes the low bidder. In responding to the protest, the Navy used what it calls last year's blanket orders, which are based on the agency's anticipated needs for a specific month, even though the actual number of orders placed during that month could differ. The actual number of service calls as reported by Sanford are fewer than those stated in the blanket orders and neither of these estimates is the same as the estimates provided in the solicitation. Nevertheless, the agency reports that last year's blanket orders represent the quantities that the Navy expects to order this year.

Since the estimates in the IFB are different from those provided by either Sanford or the Navy, and since the Navy is arguing that the estimates it uses in responding to Sanford's protest are the estimated quantities that the Navy expects to order this year, it is clear that the estimates in the IFB are not the best estimates available. Despite this fact, we have analyzed the bids^{2/} using the estimates in the IFB, the estimates provided by Sanford, and the estimates provided by the Navy, and in each case, J&D's bid remains low. Accordingly, we conclude that the bid submitted by J&D is not materially unbalanced.

^{2/} We are providing our analyses of the bids of J&D and Sanford under all three estimates as an example of the analyses we performed in connection with determining whether J&D's bid is materially unbalanced. While we have not included all the analyses in the decision, we have in fact analyzed the bids of all nine bidders that responded to the IFB, under all three estimates, and we have found that J&D remains the low bidder in all cases.

The schedule for Lot II was as follows:

ITEM NO.	SUPPLIES/ SERVICE	PARAGRAPH REFERENCE	MAX QTY	UNIT	UNIT PRICE	EXTENDED AMOUNT	LINE ITEM TOTAL AMOUNT
LOT II	Price for labor and material to perform the unit priced tasks listed below as specified in Section C. The quantities listed below are maximum estimates provided for the purpose of bid evaluation. The price for Lot II is the total of Contract Line Items 0003AA through 0008.						
SCHEDULE OF INDEFINITE QUANTITY WORK							
0003	SERVICE WORK	(Para C.6)					
0003AA	Routine Service Calls		300	EA	\$ _____	\$ _____	
0003AB	Urgent Service Calls (Normal Work Hours)		75	EA	\$ _____	\$ _____	
0003AC	Urgent Service Calls (After Normal Hours)		35	EA	\$ _____	\$ _____	
							\$ _____ (Item 0003)
0004	FREON EVOLUTION	(Para C.11)	250	EA	\$ _____		\$ _____ (Item 0004)
0005	LABOR HOUR WORK	(Para B.3 Para C.7)	500	HR	\$ _____		\$ _____ (Item 0005)
0006	MATERIAL COST AND BURDEN (MBR)	(Para B.3)	\$30,000 + (\$30,000 x _____ %)				\$ _____ (Item 0006)
0007	EQUIPMENT RENTAL COST AND BURDEN (EBR)	(Para B.3)	\$10,000 + (\$10,000 x _____ %)				\$ _____ (Item 0007)
0008	TECHNICAL DATA IN DD 1423 - Contract Data Requirements List - Exhibit A (Para B.3) 1 LOT						Not Priced Separately _____ (Item 0008)
TOTAL PRICE FOR LOT II:						\$ _____	(0003 thru 0008)

Our analysis shows the following: J&D's bid for the fixed-price work is \$48,012. Using the estimated quantities in the IFB, J&D's bid for the indefinite quantity work is \$97,200 and is broken down as follows:^{3/}

line item 0003aa--routine service calls--\$21,000
(\$70 x 300);
line item 0003ab--urgent service calls during
normal working hours--\$5,250 (\$70 x 75);
line item 0003ac--urgent service call outside
normal working hours--\$2,450 (\$70 x 35);
line item 0004--freon evolutions--\$10,000
(\$40 x 250);
line item 0005--labor hour work--\$14,500
(\$29 x 500);
line item 0006--material costs and burden (MBR)--
\$33,000 (\$30,000 + (\$30,000 x 10%)); and
line item 0007--equipment rental costs + burden
(EBR)--\$11,000 (\$10,000 + (\$10,000 x 10%)).

J&D's total bid using the IFB estimates thus is \$145,212
(\$97,200 indefinite quantity work + \$48,012 definite quantity
work).

Using the estimates provided by Sanford, J&D's bid for the
indefinite quantity work becomes \$79,820:

line item 0003aa--\$16,660 (\$70 x 238);
line item 0003ab-- \$350 (\$70 x 5);
line item 0003ac--\$630 (\$70 x 9);
line item 0004--\$3680 (\$40 x 92);
line item 0005--\$14,500 (\$29 x 500);
line item 0006--\$33,000 (\$30,000 + (\$30,000 x 10%));
and
line item 0007--\$11,000 (\$10,000 + (\$10,000 x 10%)).

Using Sanford's estimate J&D's bid thus becomes \$127,832
(\$79,820 indefinite quantity work + \$48,012 definite quantity
work).

^{3/} In our analysis here, the first number in the parentheses is the unit price bid by the bidder we are discussing and the second number is the IFB estimate of the number of orders to be placed for that line item.

Finally, if we use the estimates the Navy used to analyze the protest based on the blanket orders from last year, J&D's bid price is \$88,680 for the indefinite quantity work, broken down as follows:

line item 0003aa--\$24,150 (\$70 x 345);
line item 0003ab--\$980 (\$70 x 14);
line item 0003ac--\$1,330 (\$70 x 19);
line item 0004--\$3,720 (\$40 x 93);
line item 0005--\$14,500 (\$29 x 500);
line item 0006--\$33,000 (\$30,000 + (\$30,000 x 10%));
and
line item 0007--\$11,000 (\$10,000 + (\$10,000 x 10%)).

J&D's total bid using the Navy's new estimates thus is \$136,692 (\$88,680 indefinite quantity work + \$48,012 definite quantity work).

Sanford's bid price for the definite quantity portion of the IFB is \$17,760. Sanford's bid price is \$145,025 for the IFB indefinite quantity work based on the estimates in the IFB and is broken down as follows:

line item 0003aa--\$49,500 (\$165 x 300);
line item 0003ab--\$7,500 (\$100 x 75);
line item 0003ac--\$5,775 (\$165 x 35);
line item 0004--\$18,750 (\$75 x 250);
line item 0005--\$12,500 (\$25 x 500);
line item 0006--\$40,500 (\$30,000 + (\$30,000 x 35%));
and
line item 0007--\$10,500 (\$10,000 + (\$10,000 x 5%)).

Thus, based on the IFB as issued, Sanford's aggregate bid price is \$162,785 (\$17,760 definite quantity work and \$145,025 indefinite quantity work), compared to J&D's bid of \$145,212.

Using the estimates provided by Sanford, the firm's bid price becomes \$111,655 for the indefinite quantity work:

line item 0003aa--\$39,270 (\$165 x 238);
line item 0003ab--\$500 (\$100 x 5);
line item 0003ac--\$1,485 (\$165 x 9);
line item 0004--\$69,000 (\$75 x 92);
line item 0005--\$12,500 (\$25 x 500);
line item 0006--\$40,500 (\$30,000 + (\$30,000 x 35%));
and
line item 0007--\$10,500 (\$10,000 + (\$10,000 x 5%)).

Sanford's bid using its own estimate thus totals \$129,415 (\$17,760 definite quantity work and \$ 111,655 indefinite quantity work), compared to J&D's bid of \$127,832 using the same estimate.

Finally, using the revised estimates provided by the Navy, Sanford's bid price becomes \$131,935 for the indefinite quantity work:

line item 0003aa--\$56,925 (\$165 x 345);
line item 0003ab--\$1,400 (\$100 x 14);
line item 0003ac--\$3,135 (\$165 x 19);
line item 0004--\$6,975 (\$75 x 93);
line item 0005--\$12,500 (\$25 x 500);
line item 0006--\$40,500 (\$30,000 + (\$30,000 x 35%));
and
line item 0007--\$10,500 (\$10,000 + (\$10,000 x 5%)).

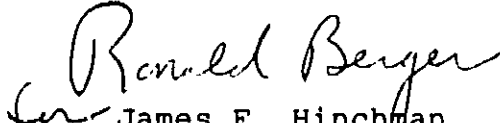
Using the new estimates provided by the Navy, Sanford's bid price is \$149,695 (\$17,760 definite quantity work and \$131,935 indefinite quantity work), compared to J&D's bid of \$136,692.

Accordingly, under all three analyses, the bid submitted by J&D is lower than the bid submitted by Sanford. Specifically, by using the estimates in the IFB, Sanford's bid is \$162,785 and J&D's bid is \$145,212; using the estimates provided by Sanford, Sanford's bid is \$129,415 and J&D's bid is \$124,832; and using the revised estimates provided by the Navy, Sanford's bid is \$149,695 and J&D's bid is \$136,692. Since under all three estimates J&D's bid remains low and will result in an award at the lowest overall cost to the government, J&D's bid is not materially unbalanced and need not be rejected.

In reaching this conclusion, we reiterate that the IFB was not issued with the best estimates available, and it did not appear to pose any difficulty for the Navy to obtain better estimates based on historical data in response to the protest. Accordingly, while we are denying Sanford's protest because an award to J&D will result in the overall lowest cost to the government under all three estimates, we caution the Navy that in issuing solicitations for requirements contracts it has an affirmative duty to use the best estimates available.

Since we have concluded that the award to J&D is proper, we need not determine whether the second-low bidder, FedServ, submitted a materially unbalanced bid.

The protest is denied.


for James F. Hinchman
General Counsel