



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Food Services, Inc.

File: B-243173; B-243173.2

Date: July 10, 1991

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DIGEST

Protester's low evaluated offer for food services, with prices based on incremental ranges of number of meals served, was properly rejected as materially unbalanced where protester offered significantly lower prices for the middle volume meal range compared to its prices for the lower and higher volume meal ranges and where agency had a reasonable doubt that protester's offer represented the lowest ultimate cost to the government.

DECISION

Food Services, Inc. (FSI) protests the rejection of its proposal as unbalanced under request for proposals (RFP) No. DTCG84-90-R-50CF18, issued by the United States Coast Guard, Department of Transportation, for full food services at the Coast Guard Base, Fort Macon, North Carolina. FSI argues that its proposal was improperly rejected as unbalanced.

We deny the protest.

The RFP, issued on August 27, 1990, contemplated the award of a firm, fixed-price service contract for the base year and 4 option years. The RFP incorporated Federal Acquisition Regulation (FAR) § 52.217-5 which stated that the government would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The RFP also incorporated FAR § 52.215-16 which warned that an offer could be rejected if prices were materially unbalanced between line items. The RFP defined a

materially unbalanced offer as one based on prices significantly less than cost for some work and prices significantly overstated for other work, and if there was a reasonable doubt that the offer would result in the lowest overall cost to the government.

The amended RFP price schedules for the base year and each option year included the following five ranges of meals served per month and their respective percentage weights for evaluation purposes: Range 1--600 to 1200 (1 percent); Range 2--1201 to 1900 (4 percent); Range 3--1901 to 2700 (90 percent); Range 4--2701 to 3600 (5 percent); and Range 5--3601 to 4500 (1 percent). For each range, an offeror was required to insert individual meal prices for the meal categories of breakfast, box lunch, lunch, and dinner.

The amended RFP stated that the award would be made to the responsible firm offering the lowest total composite cost and whose proposal offered the greatest value to the government in conjunction with the evaluation factors of technical excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance. To determine an offeror's total composite cost, the agency used a formula outlined in the RFP and calculated a weighted average price per meal for each range for each performance period. These weighted average prices were added together to determine an offeror's total composite cost.

Nine firms, including FSI, submitted offers by the amended closing date of December 19. After reviewing these offers, the agency conducted discussions with each offeror and requested each to submit with its best and final offer (BAFO) a breakdown of its meal prices, including costs for labor and foodstuffs. FSI and five other offerors submitted BAFOs by the closing date of January 29, 1991. After reviewing these BAFOs, the agency determined that the offerors had incorrectly given the cost breakdowns for labor and foodstuffs, had overlooked various personnel requirements, and some had set aside only a small percentage of the meal prices to cover overhead and profit. For these reasons, the agency reopened discussions with the six offerors. With respect to FSI, the agency also informed it that, based on its first BAFO, its meal prices for Range 3 in relation to its meal prices for the other four ranges were very low, and the agency considered its offer unbalanced.

By the closing date of February 19, each of the six offerors submitted a second BAFO. FSI submitted the following meal prices in its second BAFO for each performance period:

Price Per Meal				
Range	Breakfast	Box Lunch	Lunch	Dinner
1	7.00	7.00	8.00	8.00
2	6.75	7.50	7.50	7.50
3	4.45	4.95	5.35	5.25
4	6.75	7.50	7.50	7.50
5	6.75	7.25	7.25	7.25

Although FSI offered the lowest total composite cost (\$742,271), the agency was concerned that an award to FSI would not result in the lowest overall cost to the government. In this regard, while FSI offered the lowest prices for meals in Range 3, the range where most meals were expected to be served during the term of the contract, its prices for meals in each of the other ranges were significantly higher. Given the possibility of fluctuations, either as increases or decreases in the number of meals served (which was the reason for the incremental range scale), the agency believed that if a contract were awarded to FSI, and the number of meals served would fall outside of its lower-priced Range 3 for a period of time, the government would be required to pay significantly higher prices based on FSI's higher prices for meals served in ranges other than Range 3. The agency's analysis also showed that every other year when reserve exercises are scheduled at Fort Macon, thereby increasing the number of personnel eating meals on base, FSI would not be the low-priced offeror. Therefore, the agency rejected FSI's offer as materially unbalanced. On February 28, the agency awarded a contract to Eagle Management, Inc. which offered the next low total composite cost (\$791,619). On March 4, FSI filed this protest challenging the rejection of its offer as materially unbalanced.

FSI argues that the agency improperly rejected its low evaluated offer as materially unbalanced because its offer was not mathematically unbalanced. FSI argues that its offer should not be deemed mathematically unbalanced by comparing its meal prices for Range 3 to its meal prices for the other ranges. FSI explains that in accordance with the evaluation formula for calculating total composite cost, it submitted low prices for meals in Range 3, the range where the agency expected most of the meals to be served during the term of the contract, in order to get the contract award. However, once awarded the contract, by providing quality and timely food services, FSI states it hopes to increase the actual meal counts to the higher-priced, higher-volume Range 4.

There are two aspects of unbalancing--mathematical unbalancing, where an offer is based on nominal prices for some items and enhanced prices for other items, and material unbalancing, where an offer is mathematically unbalanced and there is a reasonable doubt that an award based on the offer will result in the lowest cost to the government. See Conax Florida Corp., B-241743, Feb. 26, 1991, 91-1 CPD ¶ 214; District Moving & Storage, Inc., et al., B-240321 et al., Nov. 7, 1990, 90-2 CPD ¶ 373; Fidelity Moving & Storage Co., B-222109.2, May 21, 1986, 86-1 CPD ¶ 476. Here, after reviewing FSI's offer, we find that the agency properly concluded that the offer was both mathematically and materially unbalanced.

FSI's low total composite cost was based on lower meal prices for Range 3 and higher meal prices for all other ranges. Under FSI's second BAFO, as the number of meals served would increase from Range 2 to Range 3, FSI's meal prices would decrease approximately 29 to 35 percent, but as the number of meals served would increase from Range 3 to Ranges 4 and 5, FSI's meal prices would increase approximately 27 to 35 percent. Further, FSI's meal prices for the lower-volume Range 2 and the higher-volume Range 4 were identical while FSI's meal prices for the middle-volume Range 3 were significantly less than its meal prices for either Range 2 or Range 4. The agency, based on information supplied by FSI during discussions, calculated that FSI's margin for general and administrative expenses, overhead, and profit for Range 3 was at most one tenth of its margin for Range 4, and found that FSI had allowed only 5 percent of its price for supplies other than food, general and administrative expenses, overhead, and profit combined. In addition, the pricing pattern of all but one of the other offers reflects either the same per meal pricing for some ranges and the same but lower meal pricing for higher ranges, or decreasing meal prices for each higher-quantity range.

We think the agency could reasonably conclude that FSI submitted nominal meal prices for Range 3 and enhanced meal prices for some other ranges. First, FSI's pricing showed much lower pricing for Range 3 meals compared to its other prices and to the pricing of other offerors. Second, FSI has failed to adequately explain how its prices could be so much less for Range 3 as compared to the other ranges and still represent its actual costs for providing food services in Range 3. Stated differently, based on the evidence in the record there was a reasonable likelihood that FSI shifted its estimated costs for Range 3 meals to other items, and FSI has failed to establish that this is not the case. FSI's explanation for its pricing methodology--that based on the RFP's formula for calculating lowest total composite cost, it offered low prices for Range 3 as this range was to be

evaluated with the highest percentage of meals and that after award, it hoped to increase the actual meal counts to the higher-priced, higher-volume Range 4--essentially is an admission by FSI that its pricing methodology, by design, was unbalanced. Accordingly, we think the agency reasonably could find FSI's offer mathematically unbalanced.^{1/}

As stated above, a materially unbalanced offer is a mathematically unbalanced one about which there is reasonable doubt as to whether its acceptance would result in the lowest ultimate cost to the government. The doubt traditionally arises in cases in which the government, despite its best efforts, is unable to estimate its actual needs with a high degree of confidence. Where the estimates are "a reasonably accurate representation of actual anticipated needs . . . the mathematically unbalanced low bid may be accepted," but in cases where the estimates do not have a high probability of being accurate, the solicitation should be canceled. See Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD ¶ 164.

Here, the agency states that its estimates/relative percentages "represent the best estimates of the government," but that it knows there will be unpredictable fluctuations, based on such things as reserve exercises and base personnel deployments, that cast doubt on whether FSI's offer represents the lowest cost to the government. FSI does not dispute the accuracy of the government's estimates or the fact that there will be unpredictable fluctuations in the number of meals served per month. In fact, if the agency had awarded the contract to FSI, FSI's stated strategy was to increase the actual meal counts from its low-priced, middle-volume Range 3 to its higher-priced, higher-volume Range 4. Thus, the protester recognized that fluctuations were possible and designed a pricing strategy based on the RFP's evaluation scheme and its intention to increase the percentage of meals as represented by Range 4.

Under the circumstances, we think the Coast Guard properly could view FSI's proposal as materially unbalanced. The record shows that the Coast Guard's best estimates, based on its experience and the mission of the Fort Macon facility, do not have a high probability of being accurate estimates of its actual needs. In light of the statutory requirements to award on the basis of price or cost when sealed bidding is used, 10 U.S.C. § 2305(b)(3) (1988), and to take cost into

^{1/} The agency discussed with FSI prior to submission of its second BAFO the agency's concerns with FSI's low meal prices for Range 3 and warned that the agency might reject FSI's offer as unbalanced.

account as an evaluation factor when competitive proposals are sought, 10 U.S.C. § 2305(a)(2), we think it especially appropriate in cases such as these for agencies to guard against the possibility of a materially unbalanced offer. See Courtney Contracting Corp., B-242945, June 24, 1991, 91-1 CPD ¶ _____. Accordingly, where the agency cannot improve upon its estimates but has substantial reason to believe that during contract performance its actual needs may deviate significantly from those estimates, the agency reasonably can view a mathematically unbalanced offer as not clearly representing the lowest cost to the government. That being so, an offer like FSI's properly is categorized as materially unbalanced and properly may be rejected. Cf. Crown Laundry and Dry Cleaners, Inc., B-208795.2; B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438.

The protest is denied.^{2/}


James F. Hinchman
General Counsel

^{2/} FSI also argues that the evaluation was flawed because it was the only firm which submitted a technical proposal (captioned a "generic" proposal) for evaluation in accordance with the technical evaluation factors. FSI maintains that since Eagle did not submit a technical proposal, the agency's award to Eagle was improper. The agency states that it did not evaluate technical proposals for any offeror. Since the requirement, if any, was waived equally for all offerors, we believe FSI has not been competitively prejudiced.