



Comptroller General  
of the United States

1046117

Washington, D.C. 20548

## Decision

Matter of: Capitol Paving of D.C., Inc.

File: B-256896

Date: July 5, 1994

Douglas A. Datt, Esq., and Michael L. Mallow, Esq., Gavett and Datt, for the protester.

Vicki E. O'Keefe, Esq., Garrett L. Rensing, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

Aldo A. Benajam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Awardee's low bid under a requirements-type solicitation is not materially unbalanced where the solicitation's maximum estimated quantities are reasonably accurate representations of the agency's anticipated actual needs and the bid will result in the lowest cost to the government.

2. Allegations that invitation for bids (IFB) contemplating the award of an indefinite quantity paving and construction contract contained defective estimates and that the agency should evaluate bids by combining contract line items that correspond to individual projects are untimely where protester could have discovered allegedly defective estimates during pre-bid opening site visits, the IFB stated that the agency would evaluate bids on the basis of total price for all line items, and protest was not filed until after bid opening.

### DECISION

Capitol Paving of D.C., Inc. protests the award of a contract to Covey Construction Co., Inc., under invitation for bids (IFB) No. N68925-93-B-A316, issued by the Department of the Navy for paving and repairs at various locations within the Navy Public Works Center, Washington, D.C. Capitol contends that Covey submitted a materially unbalanced bid.

We deny the protest.

The IFB, issued on November 30, 1993, contemplated the award of a fixed-price, indefinite quantity contract. Bidders were required to insert a unit and an extended price for each of approximately 135 contract line items (CLIN), and a total price for all line items. For each CLIN, the IFB provided a maximum estimated quantity of work or materials that the agency anticipated would be required to complete the various paving and construction projects contemplated by the IFB. The contract was to be awarded to the bidder who submitted the lowest total price, computed by adding the extended prices for all CLINs.

The agency received nine bids by the time set on January 25, 1994, for bid opening, ranging from Covey's low bid of \$3,978,722 to \$8,807,607; Capitol's bid (\$4,634,330) was second low. After Covey verified its bid in writing, the agency awarded the contract to the firm on February 4. Capitol subsequently filed an agency-level protest which the Navy denied. This protest to our Office followed. The protester contends that the agency should have rejected Covey's bid as nonresponsive because it is unbalanced.

A bid that is mathematically and materially unbalanced may not be accepted for award. Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. Sanford Cooling, B-242423, Apr. 15, 1991, 91-1 CPD ¶ 376. 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.

With regard to estimated quantities in requirements-type solicitations, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimates of the agency's anticipated needs. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126; Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ 72. Unless it can be shown that the agency's estimates--which are supposed to be reasonably accurate representations of the agency's anticipated actual needs--are not reliable, Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248, a low evaluated bid under a requirements-type solicitation cannot be rejected merely because it is mathematically unbalanced since there would be no reason to believe that acceptance of the low bid would not actually result in the lowest cost to the government. DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591.

Here, out of approximately 135 line items, the protester points to 5 line items in Covey's bid which it believes are based on overstated prices and to an approximately equal number of line items Capitol believes are underpriced. The protester provides several hypothetical examples comparing its own prices for these items to Covey's prices in support of its position that Covey's bid is unbalanced.

A comparison of a competitor's prices with one's own prices does not by itself establish price enhancement or that a bid is unbalanced. David Boland, Inc., B-244817, Oct. 29, 1991, 91-2 CPD ¶ 397. Moreover, even if Covey's bid were mathematically unbalanced, there is no evidence in the record that the solicitation's maximum estimated quantities for the indefinite quantity line items were not based on the best information available or were otherwise deficient, such that the bid could be considered materially unbalanced.

The agency states that this is the first indefinite quantity paving contract issued by the Navy Public Works Center, a relatively new activity established in October 1992. Since there was insufficient historical data upon which to base estimated quantities, the contracting activity surveyed its customers to obtain a more accurate indicator of their anticipated needs over the 2 years of the contract. The Navy emphasizes that the IFB's estimated quantities were based on the best information available--the customer needs survey--and reasonably reflect the agency's anticipated needs over the 2-year life of the contract. The agency further states that in order to complete all projects, it anticipates issuing delivery orders for all of the estimated quantities.

Where the solicitation's estimates reasonably reflect the agency's actual anticipated needs, a low evaluated bid, even if mathematically unbalanced, is generally not materially unbalanced since there would be no reason to believe that acceptance of the low bid would not actually result in the lowest cost to the government. See District Moving & Storage, Inc., et al., B-240321 et al., Nov. 7, 1990, 90-2 CPD ¶ 373; DOD Contracts, Inc., supra. Even if Covey's low bid was mathematically unbalanced, therefore, since the solicitation's maximum estimated quantities were reasonably accurate representations of the agency's anticipated actual needs, Covey's bid cannot be materially unbalanced as there is no reasonable basis for viewing the bid as representing other than the lowest cost to the government. See Services Alliance Sys., Inc., B-255361, Feb. 22, 1994, 94-1 CPD ¶ 137.

Capitol's argument that Covey's bid is materially unbalanced rests on its premise that the agency will necessarily place some delivery orders for materials or work in excess of the

IFB's stated maximum estimated quantities. In this connection, Capitol argues that when certain line items in Covey's bid are considered together within the context of individual paving or construction projects, the delivery orders for some line items which Covey overpriced will undoubtedly exceed the maximum estimated quantities stated in the IFB, thus rendering Covey's bid materially unbalanced.

If Capitol believed that the IFB contained inaccurate estimates such that bidders could devise a pricing approach to take advantage of the allegedly defective estimates, Capitol should have raised its concerns before bid opening. See 4 C.F.R. § 21.2(a)(1) (1994) (protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening). Capitol's delay in raising this issue 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. District Moving & Storage, Inc., et al., supra.

The record does not support Capitol's assertion that it could not have discovered the allegedly defective estimates prior to bid opening. With its comments on the agency report, Capitol submitted an affidavit from one of its employees attesting that based on his 20 years of experience in the paving and construction industry, his review of the IFB, and a site inspection of "a number of sites which are the subject of the [IFB]," he concluded that the IFB's estimates for various items were "vastly underestimated." The protester does not explain, and the record does not suggest why Capitol was prevented from conducting a site visit, reviewing the IFB, and raising its concerns in a timely manner. Since Capitol did not file its protest until after bid opening, its allegation that the IFB contains "vastly underestimated" quantities is untimely and will not

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<sup>1</sup>The IFB announced that the agency would provide bidders with two opportunities to conduct site visits, on December 21 and 23, 1993, prior to bid opening. Capitol does not explain why the site visits it conducted in pursuit of this protest could not have been conducted prior to bid opening.

be considered.<sup>2</sup> See Sharp Constr. Co., Inc., B-244682, July 12, 1991, 91-2 CPD ¶ 54; District Moving & Storage, Inc., et al., supra.

Capitol also argues that in light of the alleged uncertainty of the estimates, Covey's bid "should be analyzed based on specific projects already in existence and currently awaiting work, and/or based on estimated projects." The IFB clearly stated that the agency would evaluate bids on the basis of the "total price of estimated quantities," and that the "basis of [the] bid shall be" the aggregate bid price submitted for all line items, and that is how bids were evaluated. Thus, contrary to the protester's suggestion, the IFB imposed no obligation on the agency to evaluate bids by grouping line items that correspond to individual projects. Further, if Capitol believed that the agency should have evaluated bids differently than stated in the IFB, it should have filed its protest challenging the IFB's method for evaluating bids prior to bid opening. 4 C.F.R. § 21.2(a)(1).

In any case, given the agency's position that it anticipates placing orders for all of the maximum estimated quantities listed in the solicitation, we are not persuaded by Capitol's argument that Covey's pricing approach might distort the expected costs of contracting with the firm such that it warrants evaluating bids on a basis other than that stated in the IFB. Since there is no reason for us to conclude that the agency's actual needs will deviate significantly from the estimates during performance,

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<sup>2</sup>Although we have previously considered allegations of defective solicitation estimates in the context of material unbalancing cases even though the allegation was first raised after the time set for receipt of offers, see Duramed Homecare, supra, we generally have done so only where there was no clear evidence that a protester was on notice of the deficiency. District Moving & Storage, Inc., et al., supra. Here, there is no basis to conclude that Capitol could not have detected the allegedly defective estimates prior to bid opening.

Capitol's contention that the Navy should have rejected Covey's bid as materially unbalanced, is without merit. See Calore Freight Sys., Inc., B-243255.2, Aug. 2, 1991, 91-2 CPD ¶ 120.

The protest is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel