

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

11,005

PL-1

FILE: B-194760

DATE: August 9, 1979

MATTER OF: Reliable Trash Service

[Protest Alleging Awarded Bid Was Nonresponsive]

DIGEST:

Although low bid on service contract for 3-month base period and three 1-year options is mathematically unbalanced, bid may be accepted since (1) Government has known requirement and is reasonably certain funds will be available to exercise options, and (2) material unbalancing (reasonable doubt that award would not result in lowest ultimate cost) is not present.

Reliable Trash Service (Reliable) protests the award of a contract to Peach State Sanitation Company, Inc. (Peach State), under invitation for bids (IFB) F09650-79-B-0016 issued by Robins Air Force Base, Georgia.

This protest is also the subject of related litigation (Shayne v. Stetson, et al., Civil Action No. 79-1402) in the United States District Court for the District of Columbia in which the presiding judge granted the protester's motion for an order requesting the Comptroller General's consideration of this matter. Therefore, since the court has expressed an interest in a decision by our Office, we will consider the protest on the merits. See Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4.

The IFB was issued on March 9, 1979, as a total small business set-aside for refuse collection and disposal at Robins AFB. The basic contract term is for a 3-month period from July 1 through September 30, 1979, with option provisions for three additional periods, each period to run 1 year. The first option period begins on October 1, 1979, and extends through September 30, 1980. Bids were received from five firms. The Air Force evaluated the prices offered for the option periods when determining to whom to make the award and found Peach State the low bidder and Reliable

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next low. Reliable now protests that Peach State's bid is nonresponsive and should be rejected because it is "patently and grossly unbalanced in the bidder's favor and against the best interests of the Government." However, for the reasons indicated below, we deny Reliable's protest.

The bids submitted by Peach State and Reliable are as follows:

	<u>Initial 3-month Period</u>	<u>1st Option</u>	<u>2d Option</u>	<u>3d Option</u>	<u>Total</u>
Peach State	\$295,415	530,468	277,904	275,904.08	\$1,379,691.08
Reliable	\$113,351	453,404	453,404	453,404	\$1,473,563.00

Reliable argues that Peach State has "front-loaded" into the 3-month base period and the 12-month option period that follows most, if not all, the equipment costs for this contract. It notes that Peach State's base bid exceeds Reliable's by 273 percent and the average bid of the three bidders next in line by 263 percent. In Reliable's opinion, therefore, Peach State's bid is clearly unbalanced and by its acceptance the Government obligates itself to fund Peach State's equipment costs and thereafter has no choice but to continue with Peach State for all of the option periods or else it will receive little or no benefit from the contract. This, says Reliable, is not in the Government's best interest and Peach State's bid should therefore be rejected as nonresponsive.

The Air Force, on the other hand, maintains that the issue implicit in this type of protest is the propriety of the use and evaluation of option years in making the award of the contract. It argues that it was justified in evaluating option years because the requirement is ongoing and, while funds are not presently available, it is reasonably certain that funds will be available to permit exercise of the options. The Air Force points out that in section D-1 of the IFB bidders are advised: "BIDS WILL BE EVALUATED ON THE BASIC 3-MONTH PERIOD PLUS ALL THREE OPTION YEARS ON AN 'ALL OR NONE' BASIS."

At the outset, we note that Reliable has raised the issue that Peach State was privy to bid information and advice that was not made available to the other bidders. Specifically, Reliable believes that the procurement officials at Robins AFB in some manner informed Peach State that it did not have to submit a straight-line (balanced) bid. Reliable notes that Peach State was the only bidder that did not submit a straight-line bid. However, the Air Force has advised us that the procurement officials involved deny providing Peach State with any information or advice not given to the other bidders. Moreover, nothing in the record indicates that this occurred. In light of this, therefore, we do not believe there is any basis to conclude that the procurement officials in question treated Peach State differently from the way they treated all other bidders.

Turning to the question of whether Peach State's bid is unbalanced, our Office has recognized the two-fold aspects of unbalanced bidding. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is not materially unbalanced unless there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Consequently, only a bid found to be materially unbalanced may not be accepted. Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138; Mobilease Corporation, 54 Comp. Gen. 242 (1974), 74-2 CPD 185.

In evaluating the bids submitted for this procurement, the Air Force evaluated the total price offered--that is, the prices for the basic 3-month contract period and the 3 option years. This was authorized by Armed Services Procurement Regulation/Defense Acquisition Regulation (ASPR/DAR) § 1-1504 (1976 ed.) as well as by section D-1 of the IFB. After making the evaluation, the Air Force concluded that Peach State's bid offered the lowest ultimate cost to the Government. On its face, the Air Force decision is supported by the fact that Peach State's total bid is \$93,871.92 lower than the next low bid, submitted by Reliable.

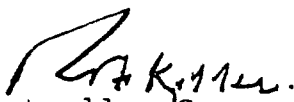
However, Reliable maintains that unless the Air Force exercises all the option periods, Peach State's bid will not provide the lowest ultimate cost to the Government. Since there is always the possibility that the Air Force will not exercise all the options because it can get a better price by resoliciting or that Peach State may be terminated for default, Reliable believes that a reasonable doubt is raised whether Peach State's bid offers the lowest ultimate cost to the Government, thereby making the bid materially unbalanced and thus nonresponsive.

In reply, the Air Force argues that it had wanted to solicit bids for a multiyear contract, but was unable to do so. Nevertheless, it points out that the requirement for refuse collection and disposal is certain to exist during the option periods provided in the IFB and there is a reasonable expectation that funds will be available to exercise those options by nature of the service involved. Thus, because the Air Force expects to exercise the options, it evaluated the bids and awarded the contract based on that expectation. Accordingly, the Air Force does not believe that there is any reasonable doubt that Peach State's bid offered

the lowest ultimate cost to the Government. In light of this, it concludes that, even if mathematically unbalanced, Peach State's bid was not materially unbalanced.

We agree. While it is true that Peach State's bid is out of line with the other bids for the first 15 months of performance, its overall bid offers the Government the lowest ultimate cost. All bidders were notified that bids would be evaluated on the basis of both the basic contract period and the 3 option years, and this is what was done. Although the present record does not adequately explain the exact reasons why Peach State allocated its costs as it did, it does indicate that Peach State decided to formulate its bid in such a manner as to minimize its risks. Our Office will not look behind a bid in attempt to ascertain the business judgments that went into its preparation. See, e.g., S.F. & G., Inc., dba Mercury, B-192903, November 24, 1978, 78-2 CPD 361. Therefore, if we assume that Peach State's bid is mathematically unbalanced, we nevertheless do not find it to be materially unbalanced since, after being evaluated in accordance with the IFB which represents the Air Force needs and funding expectations, it offered the lowest ultimate cost to the Government.

Protest denied.


Acting Comptroller General
of the United States