

Fitzmaurice, P. L. I.

14668

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Protest Alleging Awardee's Bid Was Materially Unbalanced]

FILE: B-197506

DATE: August 21, 1980

MATTER OF: Cummings Marine Systems, Inc.

DLG05124

DIGEST:

1. Assuming low bid on requirements contract is mathematically unbalanced, bid may be accepted, since material unbalancing (reasonable doubt that award would not result in lowest ultimate cost to Government) is not present.
2. Bid that takes no exception to invitation's requirements is responsive and binds bidder to perform contract in accordance with all of invitation's terms and conditions.
3. GAO no longer reviews affirmative determinations of responsibility except under circumstances not present here.
4. Although invitation contained defective specification, deficiency is not compelling reason to cancel invitation and readvertise, since no prejudice has been shown.
5. Delay in submission of agency report to GAO does not provide basis for disregarding substantive information in report or for sustaining protest.

Cummings Marine Systems, Inc. (Cummings), protests the award of a contract to Marine Controls, Inc. (Marine), under invitation for bids (IFB) No. N00189-80-B-0016 issued by the Naval Supply Center (Navy), Norfolk, Virginia.

DLG05125

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The IFB solicited bids for a requirements contract for 63 items of work pertaining to the servicing of the automatic boiler and feed-water control systems of various ships stationed at Norfolk. Work orders were to be issued whenever service was needed. The IFB solicited bids for

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a base period of 1 year and 2 option years and notified bidders that bids would be evaluated on the basis of the total price offered. Bids were received from ACC Calibrations, Inc. (ACC), Cummings, and Marine. Shortly after bids were opened, Cummings requested that the contracting officer reject Marine's bid on the ground that it was materially unbalanced. After conducting a review and verification of the bid prices of all bidders, the contracting officer concluded that Marine's bid was not materially unbalanced and subsequently awarded the contract to Marine.

In its protest to our Office, Cummings not only argues that Marine's bid is materially unbalanced, but also implies that Marine's bid is nonresponsive, that Marine itself is nonresponsive, and that the specifications were defective. Based on these, Cummings argues that the award is improper and that in light of the available competition and the Navy's uncertainty regarding its own requirements, the services in question should be procured only when the need arises.

However, for the reasons indicated below, we find no basis to disturb the award made in this instance.

The IFB listed various classes of ships and an estimated quantity of boiler systems for each class. The bidders were required to offer a unit price for each class of ship. By multiplying the unit price times the estimated quantity, the aggregate price for each class of ship is reached. After adding the aggregate prices together for the basic contract period and the 2 option years, a total price for evaluation purposes is reached. The record indicates that the Navy received the following bids:

	<u>Base Year</u>	<u>Option I</u>	<u>Option II</u>	<u>Evaluated Total Price</u>
Marine	\$449,350	\$469,168.00	\$490,100.00	\$1,408,618.00
ACC	549,988	599,486.92	653,439.66	1,802,914.58
Cummings	576,522	634,200.00	710,424.00	1,921,176.00

Cummings' protest focuses essentially on one particular class of ship and the price Marine has offered to service that class--destroyers with automatic combustion controls (DD w/ACC). The IFB indicated that the Navy's estimate for boiler systems for this class was 12. For the base year, Cummings bid a unit price of \$1,272; ACC bid a unit price of \$1,500; and Marine bid a unit price of \$200. This disparity between Marine's unit price and those of the other two bidders also exists for the 2 option years. According to our calculations, the bid prices offered to perform the required services for DD w/ACC are as follows:

	<u>Base Year</u>	<u>Option I</u>	<u>Option II</u>	<u>Total</u>
Marine	\$ 9,600	\$10,080	\$10,740.00	\$ 30,420.00
ACC	66,600	72,594	79,127.40	218,321.40
Cummings	76,608	84,264	94,380.00	255,252.00

In Cummings' opinion, the substantial difference between Marine's bid prices and the others indicates that Marine's bid is materially unbalanced and that this constitutes a reason for rejecting Marine's bid.

However, after Cummings raised this point in a protest to the contracting officer, the Navy discovered that Marine, as the incumbent contractor, knew that the Navy's estimate for DD w/ACC was incorrect. As a result, Marine based its bid price on the assumption that if any work was ever required it would be performed on the auxiliary boiler system of the Spruance Class destroyers. Upon further investigation, the Navy learned that there is in fact only one destroyer assigned to Norfolk falling under the DD w/ACC classification. In this connection, Cummings also claims that a second class of ships listed in the specifications is not in fact assigned to Norfolk and a third class, although assigned to Norfolk, does not require the services called for in the specifications.

Unbalanced Bid

Our Office has recognized that there is a two-fold aspect to unbalanced bidding. The first aspect is a mathematical evaluation of the bid to determine whether each bid item carries its share 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. Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107; Radiology Services of Tidewater, B-194264, June 18, 1979, 79-1 CPD 432.

Assuming that Marine's bid is mathematically unbalanced, we do not find Marine's bid to be materially unbalanced. As indicated above, Marine's total bid is substantially lower than the next low bid. In addition, only nine line items in the IFB out of a total of 63 deal with servicing DD w/ACC. If the amounts which ACC and Cummings bid on these line items were deducted from their bids while Marine's bid remained the same, the result would be as follows:

<u>ACC</u>	<u>Cummings</u>	<u>Marine</u>
\$1,802,914.58	\$1,921,176	\$1,408,618
- 218,321.40	- 255,252	- 00
<u>\$1,584,593.18</u>	<u>\$1,665,924</u>	<u>\$1,408,618</u>

Thus, even if there are no DD w/ACC requirements, Marine's ultimate cost to the Government would be the lowest. Therefore, the Marine bid is not materially unbalanced and should not be rejected on this ground.

Responsiveness

We have held that the test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof." 49 Comp. Gen. 553, 556 (1970).

Because Marine bid on the assumption that it would be servicing the auxiliary boiler systems on the Spruance Class destroyers, Cummings believes that Marine's bid for DD w/ACC is nonresponsive. However, nothing on the face of Marine's bid takes exception to any IFB requirement. Thus, under the above-mentioned rule, Marine is bound to

perform the contract in strict accordance with all the terms and conditions of the IFB. In light of this, there is no basis to question the responsiveness of the bid.

Responsibility

Cummings also questions whether Marine could perform the DD w/ACC service at its bid price without encountering financial difficulties. In other words, Cummings questions whether Marine is a responsible bidder. The Navy, however, has determined Marine to be responsible. Our Office no longer reviews affirmative determinations of responsibility unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See, e.g., Aerosonic Corporation, B-193469, January 19, 1979, 79-1 CPD 35. Since neither of these exceptions is present here, we need not consider this matter further.

Defective Specifications

From the record presented, it is clear that the Navy's specifications are defective. The requirement for servicing DD w/ACC is obviously overstated and Cummings has pointed out two other possible defects. The question then is whether any bidder was prejudiced as a result of these defective specifications.

It is a fundamental precept of Federal procurement practice that all bidders must compete on an equal basis. See Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. Consequently, we have recognized that solicitations must be drafted in a manner which informs all bidders, in clear and unambiguous terms, what will be required of them under the contract to be awarded. Norfolk Conveyor Division of Jervis B. Webb Company; E. C. Campbell, Inc., B-190433, July 7, 1978, 78-2 CPD 16. However, the mere existence of a technical deficiency in the solicitation is not, absent a showing of prejudice, a compelling reason to cancel an invitation and readvertise. S. Livingston & Son, Inc., B-193613, March 5, 1979, 79-1 CPD 147.

We do not believe that the bidders here were prejudiced by the deficient requirement regarding the servicing of DD w/ACC. In other words, although all bidders--including Marine--were in some way misled by the specification, this had no effect on the relative standing of the bidders. As

noted above, Marine's bid is still substantially lower than the other two even if the amount that ACC and Cummings each bid on this item is deducted from their respective bids. Moreover, the total bid of Marine is so low that even if the bid prices of ACC and Cummings for the two additional classes of ships which Cummings contends should not have been included in the IFB are deducted from their respective bids, Marine is the low bidder by a substantial margin without a similar deduction being made in Marine's bid. Therefore, regardless of the technical deficiency in the solicitation, the contract was awarded to the lowest responsive and responsible bidder without any prejudice to the other bidders.

Conclusion

Cummings also complains that the Navy unnecessarily delayed before submitting its report to our Office. Our Bid Protest Procedures, 4 C.F.R. § 20.3(c) (1980), state that we shall request an agency to submit a report on a bid protest as expeditiously as possible, generally within 25 working days. We note that more than 4 months elapsed between our January 23, 1980, request and the June 5, 1980, receipt of the Navy's report. Nevertheless, late receipt does not provide a basis for disregarding the substantive information contained in the report or for sustaining the protest on an inadequate record. See American Appraisal Associates, Inc., B-191521, September 13, 1978, 78-2 CPD 197. Moreover, in view of our prior determinations, we do not believe that Cummings was prejudiced in any way by the delay.

Protest denied.

Harry R. Van Cleave

For the Comptroller General
of the United States