

DECISION

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

26346

FILE: B-208117.2**DATE:** September 27, 1983**MATTER OF:** Microform, Inc. -- Reconsideration**DIGEST:**

1. Where bidder offers apparently nominal prices for some items but does not offer enhanced prices for other items, its bid is not mathematically unbalanced.
2. Even assuming low bid is mathematically unbalanced, we cannot conclude the low bid is materially unbalanced since quantity estimates stated in solicitation were reasonably determined, protester has presented no evidence to cast doubt upon solicitation estimates, and low bid was significantly lower than all other bids and will apparently result in lowest ultimate cost to the Government.
3. No basis exists to preclude contract award merely because bidder may have submitted below-cost bid.
4. Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility absent allegation of fraud by procuring officials, or misapplication of definitive responsibility criteria contained in solicitation.

Microform, Inc. requests that we reconsider our decision in Microform, Inc., B-208117, December 28, 1982, 82-2 CPD 582, in which we held that the failure to acknowledge an amendment to a solicitation that consists of an obvious explanation can be waived because the amendment is not material. Microform's request for reconsideration is based on its belief that we inadequately addressed its contentions that the bid submitted by Engineered Systems,

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Inc. (ESI), the proposed awardee, was nonresponsive because it was materially unbalanced and that ESI was nonresponsive because it did not have the facilities to perform the contract. We have been advised by the contracting agency that the contract was awarded to ESI after our initial decision on this protest.

We affirm our prior decision.

The protest involved the award of a contract under Jacket B-98-S issued by the Government Printing Office (GPO) for the production of 1980 Census Block Statistic Maps on microfilm and associated publications on microfiche for distribution to depository libraries.

Microform argues that ESI's bid is materially unbalanced because ESI submitted a below-cost bid for two of the items solicited--silver halide camera film (per map) and silver halide distribution film--and intends its profit on other items, particularly diazo film, to compensate for these losses. Microform adds that the quantity estimates included in the solicitation are uncertain and by bidding below-cost prices ESI could suffer a loss if the quantity estimates are not met, and the Government has a duty not to put a contractor in a situation where it will lose money.

Unbalanced bidding is the practice of bidding high on some items and low on other items. We have recognized two aspects to unbalanced bidding, both of which must exist before a bid is deemed nonresponsive. First, the bid must be mathematically unbalanced. This involves a determination as to 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 is that the bid must be materially unbalanced, that is there must be a determination that 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. Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD 542.

ESI bid a price of 10 cents per unit for silver halide camera film (per map) and for silver halide distribution film, while other bidders bid much higher prices. For example, the lowest other price bid for silver halide camera film was \$2.98 per map, while the lowest other price bid for distribution film was 39 cents per unit. ESI's prices for the other solicited items, however, were not excessive in light of the prices submitted by other bidders. In fact, its price for diazo film, which constitutes the bulk of the contract, was lower than that

offered by any of the other bidders, while its prices for two of the three other items were lower than those offered by the protester and its price for the remaining item was lower than that offered by three of the five other responsive bidders. Thus, even though it appears that ESI offered nominal prices for some items, it did not offer enhanced prices for the remaining items and therefore its bid is not mathematically unbalanced.

Even if we assume that ESI's bid is mathematically unbalanced, we do not find the bid to be materially unbalanced. Microform has only suggested that the quantities required by GPO are uncertain but it has not introduced any evidence to show that the estimates are inaccurate and that as a consequence a contract with ESI would not result in the lowest ultimate cost to the Government. The estimates are based on the number of print orders placed for decennial maps under a related program and orders received from depository libraries in response to a questionnaire concerning this program, and we cannot find that the contracting officer's reliance on these bases was unreasonable. Cf. TWI Incorporated, 61 Comp. Gen. 99 (1981), 81-2 CPD 424 (agency estimates based on a "historical" period of 1 year and "any unforeseen growth" did not have reasonable basis).

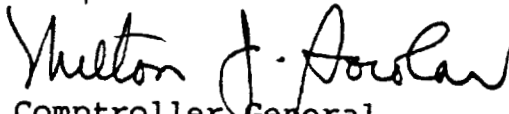
We note that ESI's total bid price of \$514,033.96 was significantly lower than the next low bid of \$566,176.19. In these circumstances we cannot conclude that ESI's bid is materially unbalanced since it appears that ESI's bid will result in the lowest ultimate cost to the Government.

Regarding Microform's allegation that ESI's bid will result in the firm suffering a loss, the fact that a firm may have submitted a below-cost bid does not constitute a legal basis for precluding a contract award. Hybrid Abstracts, B-207083, May 24, 1982, 82-1 CPD 488. Thus, the Government does not have a duty to prevent a bidder from suffering a loss under a contract if a bidder is found to be otherwise responsible.

Microform next contends that ESI is nonresponsible because it does not have facilities capable of performing the contract. It asserts that the only microfilm facility which ESI operates belongs to the Department of Energy (DOE) and use of that facility is limited to work under a contract it has with DOE. It notes that ESI was previously disqualified by GPO as nonresponsible on a similar solicitation. GPO, however, conducted a preaward survey of ESI's facilities and concluded that the firm is responsible.

Our Office does not review protests against affirmative determinations of responsibility unless fraud on the part of the procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Hybrid Abstracts, supra. Neither exception applies here and consequently this contention is not for our review.

Our prior decision is affirmed.

for 
Comptroller General
of the United States