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DECISION

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

FILE: B-220976 **DATE:** February 13, 1986

MATTER OF: USA Pro Company, Inc.

DIGEST:

The apparent low bid for a contract contemplating a base year and 2 option years was mathematically unbalanced where there was a 90-percent differential between the base year and second option year prices, and the bidder made no credible showing that its pricing structure reflected the actual costs to be incurred in each contract year. Since the agency had a reasonable doubt that acceptance of the bid, which did not become low until into the second option year, would ultimately result in the lowest overall cost to the government, the bid was properly rejected as materially unbalanced.

USA Pro Company, Inc. (USA), protests the rejection of its bid as materially unbalanced under invitation for bids (IFB) No. F04684-85-B-0021, issued by the Department of the Air Force. The procurement is for the acquisition of painting services at Vandenberg Air Force Base, California, and involves a cost comparison conducted in accordance with Office of Management and Budget (OMB) Circular No. A-76 to determine whether it is in the government's best economic interest to contract the services or retain them in-house. USA, the apparent low bidder, complains that the Air Force unreasonably determined that acceptance of the firm's bid might not ultimately result in the lowest overall cost to the government. We deny the protest.

Background

The IFB contemplated the award of a 1-year contract with two 1-year options, and provided that the award would be made to that responsive and responsible bidder whose price, including all options, was low. USA was the apparent low bidder with a total price of $3,881,140. The government's in-house cost estimate was second low at $4,593,675. However, the Air Force was concerned that USA's pricing structure, in comparison with both the government's estimate

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and the bids of the other commercial firms that priced the options, indicated either that USA had made a mistake in its bid or that its bid was unbalanced.

The Air Force noted that USA's second option year price of $800,784 was nearly half of its base year price of $1,521,712 (the first option year price was $1,558,643), and specifically asked the firm to verify the second option year figure. USA responded that its total bid price was correct, but did not offer any explanation as to how it had priced the second option year. The Air Force then determined that the firm's bid was mathematically unbalanced since both the government's estimate and the other commercial bids showed successive price increases in the option years, principally due to the expectation of increased labor rates in those years.1/ Because the Air Force concluded that acceptance of USA's bid would only be in the government's best economic interest if the second option year (the third year of performance) were exercised, and there were doubts that it would be exercised, the Air Force rejected the bid as nonresponsive since it was materially unbalanced.2/

USA strenuously urges that its bid is neither mathematically nor materially unbalanced. The firm explains that its second option year price is substantially lower than the base and first option year prices because it expects to incur reduced start-up, supervisory, and labor costs in the third year of performance. In any event, USA argues that even if its bid is mathematically unbalanced, it is not materially unbalanced because the Air Force unreasonably determined that acceptance of its bid, offering the lowest total price for the work, would not be in the government's best economic interest. USA contends that the Air Force has arbitrarily concluded there is reasonable doubt that the second option year will be exercised.

1/ For example, the government's estimate for the base year and the 2 option years was, respectively, $1,427,131, $1,547,431, and $1,619,113, and the bid of the apparent second low commercial firm was $1,460,668, $1,558,507, and $1,604,982.

2/ *See* the Federal Acquisition Regulation, 48 C.F.R. § 52.217-5(b) (1984), as incorporated into the IFB, which provides for rejection of the bid as nonresponsive if the bid is materially unbalanced as to prices for the basic requirement and the option quantities.

Analysis

This Office has recognized that unbalanced bidding entails two aspects. The first aspect involves a mathematical evaluation of the bid to determine whether each element of the bid carries its proportionate share of the total cost of the work plus profit, or whether the bid is structured on the basis of nominal prices for some work and inflated prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of accepting a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al., Apr. 22, 1983, 83-1 CPD ¶ 438.

(1) Mathematical Unbalancing

Although USA contends that its bid is not mathematically unbalanced and offers several business reasons why its second option year price is substantially lower than the other years, we conclude that the firm's second option year price does not carry its proportionate share of the total cost of the work plus profit.

With regard to reduced start-up costs, we have recognized that, in certain situations, start-up costs may be substantial and that the base year price, in consequence, may be higher than option year prices without the bid being mathematically unbalanced. See Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656. However, in the present matter, although USA urges that it will not incur certain equipment expenses in the second option year, we fail to see why the firm priced its first option year higher than its base year, since we normally would not expect start-up costs to be reflected in an option year price. Rather, if there is a legitimate expectation of a reduction in equipment costs, the first option year price should also be lower than the base year price. In our view, USA's argument would only be credible if its pricing structure showed a decrease in both option years so as to indicate that the base and option year prices are reasonably related to the actual expenses to be incurred in each year. See Solon Automated Services, Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548.

For the same reason, we reject USA's contention that its bid is not unbalanced under the expectation that there will be reduced supervisory costs in the second option year. If reduced supervisory costs may be expected, we again fail to see why the first option year price is higher than the base year price. Realistically, we would assume that there would be a lesser need for supervisory personnel in the first option year as well as in the second, and the price for the first option year, accordingly, should be lower than that for the base year if these savings were reasonably anticipated.

Finally, we discount USA's assertion that its bid is not unbalanced because of the expectation of reduced labor costs in the second option year. The firm argues that this will stem from increased labor efficiency as the result of 2 years of contract experience and from the fact that fewer laborers will be needed in the last year of performance for preparation and painting work. However, if laborers become more efficient after 2 years of performing the work, they should also become relatively more efficient after 1 year, yet USA's price for the first option year shows no expectation of such a labor savings because of greater efficiency. As the Air Force points out, each contract year has essentially the same requirements, and nothing in record supports USA's position that fewer laborers will be needed in only the last year of performance. Moreover, it is significant that USA has not explained why its bid should be considered to be mathematically balanced where both the government's estimate and the bids of the other commercial firms reflected successively higher prices for the option years because of the anticipation of increased labor rates in those years.

We have expressly found a bid to be mathematically unbalanced where the base/option period price differential is 90 percent, precisely the differential between USA's base year price of $1,521,712 and its second option year price of $800,784. See Reliable Trash Service, B-194760, Aug. 9, 1979, 79-2 CPD ¶ 107. Since we reject USA's ostensible business reasons for pricing the second option year in the manner it did, we agree with the Air Force that the bid was mathematically unbalanced.

(2) Material Unbalancing

The Air Force concluded that it would not realize any savings over the cost of retaining the services in-house by accepting USA's mathematically unbalanced bid until the last year of performance. (USA's bid does not become lower than the government's estimate until the second month of the second option year.) Although the Air Force notes that it was required by OMB Circular No. A-76 to evaluate the bids in comparison with the government's estimate on a 3-year basis[3], the agency states that because the services in question would be contracted to a commercial firm for the first time, there was no prior procurement history that the option periods would be routinely exercised. The Air Force states as well that since this was a first-time effort, it was concerned that specification and performance difficulties might arise that would preclude the second option year from being exercised. Accordingly, the Air Force asserts that it had a reasonable doubt that the period of performance would extend to the second option year and properly rejected USA's bid as materially unbalanced. We agree.

In our view, it is clear that, by awarding USA the contract, the government would assume the risk that if the second option year were not exercised, it will have paid USA an enhanced amount for the services actually performed. Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al., supra. (USA's base and first option year prices combined represent 79 percent of its total bid.) Despite USA's challenges to the Air Force's position that there is a reasonable doubt the second option year will be exercised, we do not believe the firm has shown that the agency's view in the matter is unwarranted. A sufficient basis exists to consider the bid materially unbalanced since the degree of mathematical unbalancing present in the bid prevents it from becoming low until the final period of performance, and, therefore, reasonably suggests that an award to USA ultimately might not be in the government's best economic interest. See Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD ¶ 632.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel

3/ See OMB Circular No. A-76 Supplement, August 1983, part 1, chapter 2, paragraph F.3.