



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Executive Court Reporters, Inc.

File: B-243772

Date: May 6, 1991

Edwin F. Donovan for the protester.
Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that awardee's bid is materially unbalanced and thus does not reflect overall lowest cost to the government is dismissed where allegation essentially constitutes challenge to solicitation evaluation scheme.

DECISION

Executive Court Reporters, Inc. protests the intended award of a contract to Heritage Reporting Company under invitation for bids (IFB) No. GP-101, issued by the U.S. Government Printing Office (GPO) for reporting and transcription services. Executive alleges that Heritage's bid should have been rejected as materially unbalanced.


We dismiss the protest.

According to Executive, the IFB required bidders to quote both an "appearance fee" for attending hearings, and a per-page rate for copies of transcripts of the hearings. Executive asserts that the IFB contains no prohibition against the contractor charging, for each hearing, either the appearance fee or the per-page rate, or both. Executive contends that Heritage offered an unreasonably low per-page rate and an unreasonably high appearance fee. While Executive does not explain how the agency evaluated the bids, it argues that if Heritage elected to charge the appearance fee for each hearing, the ultimate cost to the government of accepting Heritage's bid would be higher than ECR's offered price. Executive concludes that Heritage's bid is materially unbalanced because there is a reasonable doubt that award to it will result in the lowest ultimate cost to the government. See OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be

filed by the time designated for bid opening, 4 C.F.R. § 21.2(a)(1) (1991). While Executive characterizes its protest as a challenge to the agency's acceptance of an unbalanced bid, it in fact essentially is complaining that the solicitation's evaluation scheme does not account for differing approaches in contractor pricing, and thus does not insure award at the lowest ultimate cost to the government. As noted above, a bid is materially unbalanced when there is a reasonable doubt that acceptance of a mathematically unbalanced bid--that is, a bid that contains understated prices for some items and overstated prices for other items--will result in the lowest overall cost to the government. OMSERV Corp., B-237691, supra. Here, however, according to the protester, this doubt arises from the fact that the IFB allows the contractor to charge the government the higher appearance fee instead of, or in addition to, the lower per-page rate. As Executive did not protest this alleged defect in the IFB until after bid opening, the protest is untimely.

The protest is dismissed.


for John M. Melody
Assistant General Counsel