



Comptroller General
of the United States

Washington, D.C. 20548

44081

Decision

Matter of: C.F.S. Air Cargo, Inc.

File: B-240726.5

Date: June 6, 1991

Donald A. Tobin, Esq., Dempsey, Bastianelli, Brown & Touhey, for the protester.

John J. Duffy, Esq., for Tate Facilities Services, Inc., an interested party.

Louise E. Hansen, Esq., Defense Logistics Agency, for the agency.

James M. Cunningham, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Fixed-price offer by the low, technically acceptable offeror is not unbalanced where there is no convincing evidence of overstated pricing for line item which the protester asserts is enhanced.

2. While the protester contends that the awardee cannot perform the services required under one line item for the price proposed for these services, since in awarding the contract the agency concluded that the awardee could perform at the offered price and determined that the firm was responsible, the alleged below-cost pricing does not provide a basis to overturn the award.

DECISION

C.F.S. Air Cargo, Inc. protests the award of a firm, fixed-price requirements contract to Tate Facilities Service, Inc., by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. DLA005-90-R-0003, issued for operation of DLA's consolidation and containerization point, Lathrop, California, for a base period of 1 year with two option periods.

C.F.S. argues that Tate's low proposal should have been rejected as unbalanced. C.F.S. also hypothesizes that Tate's offer for item No. 0001AF is so low that it is either contrary to sound business practices or must have resulted from Tate's suspicion or knowledge of an erroneous RFP work estimate which

would allow Tate to somehow recoup its loss on this item elsewhere under the contract.^{1/}

We deny the protest in part and dismiss it in part.

The RFP listed seven items of required services including items No. 0001AA (routing missing stock to various locations), 0001AB (receiving, loading, marking, labelling, and outloading various materials), and 0001AF (transition period). Offerors were asked to submit firm, fixed-priced proposals with the award to be made to the "responsible offeror submitting the lowest-priced technically acceptable proposal." Seven offers were received on September 5, 1990. After evaluating proposals, DLA awarded a contract to FWK on December 31, 1990. However, DLA rescinded its contract with FWK on January 23, 1991, when FWK provided evidence of a "mistake in [its] certification as a small disadvantaged business concern." Immediately thereafter, DLA awarded a contract to Tate.

C.F.S. protested the award on the basis that Tate's offer for items No. 0001AA, 0001AB, and 0001AF is unbalanced. C.F.S. contends that Tate's prices for items No. 0001AA and 0001AF are substantially underpriced and that Tate's price for item No. 0001AB is substantially overpriced.

The concept of unbalancing applies to negotiated contracts such as this one, where price constitutes the primary basis for award. Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 CPD ¶ 259; TLM Berthing, Inc., B-220623, Jan. 30, 1986, 86-1 CPD ¶ 111. Before an offer can be rejected as materially unbalanced under an RFP where award is to be made to the low-priced technically acceptable offeror, the offer must first be found to be mathematically unbalanced. An offer is mathematically unbalanced where it is based on nominal prices for some items and enhanced prices for other items. Where there is a reasonable doubt that acceptance of a mathematically unbalanced offer will result in the lowest overall cost to the government, the offer is materially unbalanced and cannot be accepted. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

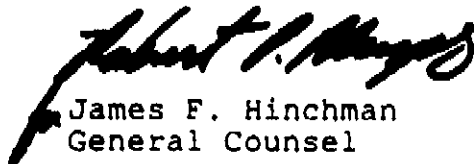
C.F.S. asserts that Tate offered nominal prices for two items and an overstated price for only one item, No. 0001AB. C.F.S.'s argument is essentially based on a comparison of Tate's prices with its own, which does not by itself establish that a bid is unbalanced. Id. In fact, while Tate's price

^{1/} In Caltech Service Corp., B-240726, Dec. 18, 1990, 90-2 CPD ¶ 497, we determined that the estimates in the solicitation are reasonable.

for item No. 0001AB is approximately 40 percent higher than C.F.S.'s price, three of the other six offerors, including the incumbent, offered prices higher than Tate's for this item, and Tate's price was within 12 percent of the average price of the other six offerors. Thus, even if Tate's offer did contain nominal prices for two line items, it is not mathematically unbalanced because there is no probative evidence that it contains any enhanced prices. Durable, Inc., B-228911, Nov. 3, 1987, 87-2 CPD ¶ 442. Since we conclude that Tate's offer is not mathematically unbalanced, we need not consider whether it is materially unbalanced. Id. Consequently, we deny this ground of protest.

Finally, concerning C.F.S.'s assertions about Tate's allegedly extremely low price for item No. 0001AF, since DLA made award to Tate it concluded that Tate could perform at the offered price and determined that the firm was responsible. See Cajal Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286. Thus, the submission of an alleged below-cost offer does not provide a basis to overturn the award. Id.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel