



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Boston Graving Dock Corporation

File: B-243871

Date: August 8, 1991

Paul W. Losordo, Esq., for the protester.
Catherine Griffin for American Shipyard Corporation, an interested party.
Richard W. Freethey, Esq., and Michael R. Nevarez, Esq., United States Coast Guard, Department of Transportation, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that bid is materially unbalanced is denied where there is no reasonable doubt that an award based on bid will ultimately result in the lowest overall cost to the government, since the bid is low for both the base items and the option items and no advance payments will be made.

DECISION

Boston Graving Dock Corporation (BGD) protests the award of a contract to any other bidder under invitation for bids (IFB) No. DTCG80-91B-3FA875, issued by the United States Coast Guard, Department of Transportation, for drydocking repair services. BGD, the third low bidder, contends that American Shipyard Corporation, the low bidder, and Robert E. Derecktor of Rhode Island (REDRI), the second low bidder,^{1/} submitted unbalanced bids; as a result, BGD claims that it is entitled to the award as the low responsive bidder.

We deny the protest.

The IFB, issued on March 8, 1991, contemplated the award of a firm, fixed-price contract for "all necessary labor, material, services, equipment, supplies, power, accessories,

^{1/} Since we find that the award to American Shipyard was proper, we need not address the protester's challenge to REDRI's bid.

[and] facilities . . . to perform drydocking repairs, and alterations to the USCGC SPENCER." The specific work items were divided into the following four categories: base items, option items, composite labor rates, and lay day rates. The IFB listed 34 base items and provided that "[t]hese are items which, if there is an award at all, will be awarded."

The Coast Guard received four bids by the bid opening date. Upon review of the bids, the contracting officer determined that American Shipyard was the low responsive, responsible bidder, REDRI was the second low bidder, and BGD was the third low bidder. The contracting officer awarded the contract to American Shipyard on May 1. BGD's protest to our Office followed.

BGD claims that the award to American Shipyard was improper because the awardee submitted a materially unbalanced bid. According to BGD, American Shipyard overstated its prices for certain base items and understated them for certain option items. BGD speculates that American Shipyard based its prices on the assumption that certain option items would not be ordered, and structured its bid so that while remaining the overall low bidder, it would recoup more on the base items and those selected option items it deduced actually will be ordered than would other bidders who did not so structure their bids.

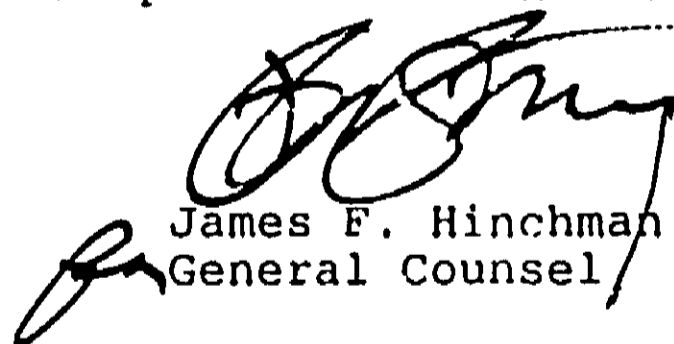
A bid which is materially unbalanced must be rejected as nonresponsive. Howell Constr. Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. A bid is materially unbalanced if (1) there are nominal prices for some items and enhanced prices for other items; and (2) there is a reasonable doubt that an award based on the bid will result in the lowest cost to the government. Edward B. Friel, Inc. et al., 55 Comp. Gen. 488 (1975), 75-2 CPD ¶ 333. We have found such reasonable doubt to exist in the following instances: where a bid does not become low unless all options are exercised and uncertainty exists whether the options will be exercised, see G.L. Cornell Co., B-236930, Jan. 19, 1990, 90-1 CPD ¶ 74; and where payments made under a contract awarded pursuant to a grossly unbalanced bid would amount to improper advance payments. See Nebraska Aluminum Castings, Inc.--Second Request for Recon., B-222476.3, Nov. 4, 1986, 86-2 CPD ¶ 515. Unlike those cases, there is nothing in the record here to show that an award to American Shipyard will not result in the lowest cost to the government.

As a preliminary matter, the record does not support BGD's speculation that American Shipyard had knowledge as to which option items would or would not be ordered. In fact, we fail to see how a bidder would gain such knowledge given the nature of the work called for by the option items. For example,

optional line item 0025 calls for prices for five different methods of coating the underwater body of the vessel. The method actually required will not be determined until an inspection by the contractor reveals the condition of the underwater body.

Similarly, the record does not support the protester's allegation that award to American Shipyard will not result in the lowest cost to the government and thus is materially unbalanced. Rather, the government is assured of receiving the lowest cost in all areas of performance of the contract because American Shipyard's base item bid (\$392,800) as well as its option item bid (\$102,390) are significantly lower than BGD's for the same items (\$455,454 and \$214,624, respectively). See Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321. Accordingly, this is not a case where the bid does not become low unless all options are exercised. Nor is it possible that American Shipyard could either recoup any losses occasioned by its alleged underbidding or obtain an improper advance payment by performing the allegedly enhanced-priced items at the beginning of the contract period because (1) all bidders were advised that the resulting contract would be a firm, fixed-price one without estimated quantities or other pricing variables involved; and (2) the solicitation contained Federal Acquisition Regulation § 52.232-15, entitled "Progress Payments Not Included," which states that progress payments during the performance of the resulting contract are not allowed.

The protest is denied.



James F. Hinchman
General Counsel