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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allstate Van & Storage, Inc.

File: B-247463

Date: May 22, 1992

Michael J. Radford, Esq., Procopio, Cory, Hargreaves and Savitch, for the protester.
Stephen E. Katz, Esq., James J. Paris, Esq., and Sheila Wasson, Department of the Navy, for the agency.
Henry J. Gorczycki, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the awardee's proposal was materially unbalanced is untimely when filed after receipt of initial proposals where the protester's allegation is based on inaccuracies in the government work estimates and the protester, who was the incumbent contractor, should have known of the alleged inaccuracies from its own contract experience.

DECISION

Allstate Van & Storage, Inc. protests the award to Ace Van & Storage by the Department of the Navy, Naval Supply Center, San Diego, California, under request for proposals (RFP) No. N00123-91-R-5504 for services relating to the packing, moving, and storage of household goods of Naval personnel. Allstate asserts that Ace's offer should have been rejected because it was mathematically and materially unbalanced.

We dismiss the protest.

On September 6, 1991, the Navy issued the RFP for a fixed-priced, indefinite delivery, requirements contract. The date for submission of initial offers was October 21. Prices were requested for 33 items divided into 3 schedules: (I) goods being moved out of the area, (II) goods being moved into the area, and (III) goods being moved between locations within the area. The RFP specified estimated annual quantities for each item and required offerors to guarantee a daily maximum quantity capability for each schedule.[1] Offers were to be evaluated on the basis of a total aggregate price for all items under a given schedule. The RFP stated that award may be made without discussions and thus instructed offerors to submit their best offers in their initial proposals.

On September 20, Allstate, the incumbent contractor, sent a letter to the Navy expressing, among other things, its concern that an offeror proposing on an all-or-none basis could unbalance its offer by proposing an understated price for schedule III and guaranteeing a low maximum daily capability. Allstate alleged that this could result in an award that would require a large assignment to the secondary contractor, which would preclude the government from receiving the lowest actual price, even though award was to be made to the lowest aggregate-priced offeror. Allstate additionally asserted that this practice would penalize offerors who did not unbalance their offers. In order to address these concerns, Allstate requested that the Navy change its evaluation plan so as to consider the guaranteed daily capabilities. By letter of October 4, the contracting officer denied Allstate's request.

The Navy received three offers on October 21. Ace and Allstate submitted the following offers on an all-or-none basis:[2]

	Ace	Allstate
Schedule I	$ 564,053	$ 452,085
Schedule II	372,310	255,714
Schedule III	1,074,069	1,375,424
	$2,010,432	$2,083,223

After reviewing each item of Ace's and Allstate's offers, the Navy found that it had no reasonable doubt that Ace's offer would not result in the lowest overall cost to the government. Thus, the Navy made award to Ace on December 5 without conducting discussions.

Allstate protested the award to the Navy on December 19, basically asserting that Ace's offer was materially unbalanced due to improper government estimates of quantities and/or Ace's potential manipulation of the actual quantities that could be ordered under the contract. The Navy dismissed Allstate's protest on January 15, 1992, as

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[1]Actual daily quantities in excess of the guaranteed capability would be assigned to a secondary contractor.

[2]The third offeror only submitted an offer for schedule III as a secondary contractor for quantities in excess of the primary contractor's guaranteed maximum daily capability.

untimely. The Navy explained that the protest concerned alleged defects in the RFP that should have been protested before the closing date for initial proposals.

Allstate protested to our Office on January 31. In its protest, Allstate describes five items from the RFP price schedules, which provide the basis for its assertions that Ace's offer is materially unbalanced.

First, under Item 003 of schedule I, the contractor is required to transport loose articles that do not fit into the standard packing containers back to its facility and pack these items in either government-furnished or contractor-furnished containers. Ace offered to perform this service for $115 per unit using government-furnished containers and for $20 per unit, $54.50 per unit, or $93 per unit using its own containers.[3] Allstate alleges that the contractor can manipulate the quantities of government-furnished or contractor-furnished containers used, e.g., by how it packs the containers, and thus argues that the government estimates do not accurately reflect the actual quantities that will be experienced with Ace as the contractor. Moreover, Allstate asserts that more government-furnished containers are actually available than envisioned in the government estimate in the solicitation. Allstate asserts that Ace has inflated its price for government-furnished containers and will use more of these than the government estimated, thus increasing the cost to the government beyond Ace's evaluated price.

Next, Allstate contends Ace's prices for Items 0015 and 0020 of schedule II are unbalanced. Item 0015 covers the transporting and unpacking of household goods, and Item 0020 covers transporting and unpacking unaccompanied baggage. Ace offered to perform Item 0015 for $0.32 per unit and Item 0020 for $11.32 per unit. Allstate alleges that containers are frequently shipped into the area inadequately classified and that the contractor has an opportunity to classify such containers as either household goods or unaccompanied baggage. Allstate further alleges that Ace may intend to manipulate the classification of these unmarked containers in order to artificially increase the

[3]This item has numerous subitems. Subitem 0003A pertains to government-furnished containers used in domestic or overseas packing, for which Ace offered a uniform price of $115 per unit. Subitem 0003B pertains to contractor-furnished containers for which Ace offered a price of $20 per unit for overseas packing, $93 per unit for domestic packing of overflow and oversize articles in contractor-furnished containers, and $54.50 per unit for domestic packing of "other shipments" in contractor-furnished containers.

quantity of the higher-priced Item 0020 service beyond the government estimates and, thus, Ace's evaluated price is understated.

Another contention involves Item 0023 of schedule II, which covers the storage of containerized articles coming into the area. The IFB estimated annual quantity for this item is 13,370 units. Ace offered a price of $17.32 per unit for this item. Allstate alleges that Ace's price is overstated because the price of providing this service is negligible,[4] and because Ace offered a price of $5 per unit for Item 0009 in schedule I, which assertedly is the same service for articles being shipped out of the area. Allstate contends that the government estimate is incorrect because Allstate's experience under the 1991 contract reveals an actual quantity of 26,730 units and because it does not account for storage required after the contract term is over. Allstate contends that Ace's offer is unbalanced to take advantage of this inaccuracy and its evaluated price is understated with regard to the government's actual requirements.

Finally, Allstate contends Ace's price for Item 0031 of schedule III is unbalanced. The RFP describes this item as the moving of articles within the area from one residence to another. The government estimate is 137,605 units for the year and the RFP permitted offerors to guarantee their daily maximum capabilities at as low as 750 units per day. Ace offered a guaranteed maximum capability of 750 units per day. Allstate alleges that moves tend to be clustered around certain days, such as weekends, and this frequently causes the actual daily quantities to exceed 750 units. Thus, Allstate contends that Ace, with its relatively low guaranteed capability, likely will not have to service the full annual quantity estimated in the RFP. Allstate alleges that Ace understated its offered price on Item 0031 and qualified its offer as all-or-none in order to take competitive advantage of the evaluation plan.

As detailed above, Allstate asserts that Ace's proposal was unbalanced in part because Ace will manipulate its performance under the contract in order to perform quantities materially different from those estimated. In other words, Allstate alleges that Ace will not perform under the contract in accordance with the solicitation specifications. A protester's allegation that the awardee will not actually

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[4]Allstate alleges that the price for Item 0023 is based on the cost of warehouse space, and that since warehouse space is fixed and plentiful in the area, the price for this item should be low. To support its contention, Allstate advances its own prices of $0 per unit under the 1991 contract and its offer of $7 per unit for this RFP.

perform under the contract in accordance with the solicitation's specifications is a matter of contract administration that is the responsibility of the contracting agency and is not for consideration by this Office. 4 C.F.R. § 21.3(m)(1) (1992); Allstate Van & Storage, Inc., B-238320, Apr. 26, 1990, 90-1 CPD ¶ 431.

Allstate also alleges that the Navy's estimated quantities do not accurately reflect the actual quantities that will be experienced under the awarded contract. To support this allegation, Allstate refers to its own experience as the incumbent to show that the estimates are inaccurate.

An offer that is mathematically and materially unbalanced may not be accepted for award. See Duramed Homecare, B-245766, Jan. 30, 1992, 71 Comp. Gen. ___, 92-1 CPD ¶ 126. In determining whether an offer is impermissibly unbalanced, the offer must first be shown to be mathematically unbalanced, which involves the assessment of whether each element of the offer carries its share of the costs of the work plus profit or whether the offer is based on nominal prices for some work and enhanced prices for other work. See Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248. Next, the offer must be materially unbalanced, that is, there must be a reasonable doubt that award to the offeror submitting a mathematically unbalanced offer will result in the lowest ultimate cost to the government. See USA Pro Co., Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159. With regard to estimated quantities in requirements contracts, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimate of the agency's anticipated needs, since the unbalanced bid will only become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced items. Duramed Homecare, supra.

Although Allstate possessed the information regarding its contract experience on which it bases its unbalancing argument, or the ability to compile this information, before the date for receipt of initial proposals, it did not protest this matter to the Navy or our Office until after the Navy evaluated the proposals and awarded the contract. Our Bid Protest Regulations require that protests based upon alleged improprieties apparent on the face of a solicitation be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). This requirement is intended to provide parties with a fair opportunity to present their cases and to enable the contracting agency to take effective corrective action when it is most practicable and where circumstances warrant. Ratcliffe Corp.--Recon., B-220060.2, Oct. 8, 1985, 85-2 ¶ 395; see Sharon R. Riffe-Cobb--Recon., B-223194.2 et al., June 25, 1986, 86-2 CPD ¶ 9. Since

Allstate, based on its own experience as the incumbent contractor, knew of or should have known of the alleged defects in the government's estimates specified in the solicitation, Allstate's argument that Ace's proposal was materially unbalanced, due to defective government estimates, is untimely.[5] Sharp Constr. Co., Inc., B-244682, July 12, 1991, 91-2 CPD ¶ 54; District Moving & Storage, Inc., et al., B-240321 et al., Nov. 7, 1990, 90-2 CPD ¶ 373; Semcor, Inc., B-227050, Aug. 20, 1987, 87-2 CPD ¶ 185.

Allstate did question the evaluation plan with the Navy on September 20, an issue which is related to Allstate's current claims of unbalanced pricing caused by defective government estimates. On October 4, the Navy denied Allstate's request for revision of the evaluation plan. Allstate had 10 days from the day it received this notice of adverse agency action to timely protest with our Office. 4 C.F.R. § 21.2(a)(3). Allstate did not do so. Therefore, to the extent that Allstate's current protest restates the issues addressed in its September 20 letter to the Navy, it is untimely.

Allstate finally asserts that an unbalanced pricing scheme was apparent on the face of Ace's proposal and that the Navy would have become aware of this fact if it had conducted a proper price analysis. Allstate contends that Ace's unbalanced proposal presents a risk of future claims of mistake and requests for contract reformation, and that the Navy either should have held discussions to address Ace's unbalanced pricing or rejected Ace's proposal as a materially unbalanced.

We think this argument merely constitutes a reframing of Allstate's untimely protest that Ace's proposal was materially unbalanced and we will thus not consider it. In any case, the record reflects that agency did perform a price analysis and could make award to the low priced-offeror as permitted by the RFP. In this regard, each line item was carefully reviewed by the agency, which found no evidence of

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[5]Although we have previously considered allegations of defective solicitation estimates in the context of material unbalancing cases, even though the allegation was first raised after the time set for receipt of offers, see Duramed Homecare, supra, we generally have done so only where there was no clear evidence that a protester was on notice of the deficiency. District Moving & Storage, Inc., et al., supra.

material unbalancing or reasonable doubt that award to Ace would not result in the lowest overall cost to the government.

The protest is dismissed.

James A. Spangenberg
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