



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BFPE International

File: B-248783

Date: September 25, 1992

Steven M. Dettman for the protester.
Paul M. Fisher, Esq., and Kimberly L. Frye, Esq., Department
of the Navy, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that awardee's bid was nonresponsive since it contained below-cost prices for one line item is denied because there is nothing inherently improper in submitting below-cost prices and whether the prices are too low to ensure successful contract performance is a question of bidder responsibility, which the agency resolved in the affirmative--a determination the General Accounting Office does not review absent circumstances not present in this protest.
2. Protest that awardee's bid was unbalanced is denied where the bid contained nominal prices for some items but did not contain enhanced prices for others and therefore is not mathematically unbalanced.
3. Protest that awardee's bid for line item covering routine maintenance services would cause the agency to make improper advance payments is denied where record does not show that awardee's line item price was overstated.

DECISION

BFPE International protests the award of a contract to Olde Towne Services, Inc., under invitation for bids (IFB) No. N62470-91-B-9289, issued by the Department of the Navy for the maintenance of fire protection and warning systems at the Oceana Naval Air Station in Virginia Beach, Virginia. The protester principally contends that the awardee submitted an artificially low and unbalanced bid which should have been rejected as nonresponsive.

We deny the protest.

The IFB contemplated the award of a firm, fixed-price contract with a definite quantity portion and an indefinite quantity portion. Under line item 0001, bidders were to submit a lump-sum price for routine preventative maintenance services on Oceana's fire protection and warning systems for a period of 1 year. Under line item 0002, bidders were to submit fixed unit and extended prices for 12 subitems involving the performance of special tasks related to the improvement of the fire protection and warning systems and for the delivery of replacement chemicals used in the operation of the systems. Since performance under these subitems was to be accomplished on an as-needed basis, estimated quantities for the number of tasks and the amounts of chemicals were provided in the IFB. Award was to be made on the basis of the lowest total price for both line items.

Eight bids were received. Olde Towne bid \$69,600 under line item 0001 for the definite quantity of preventative maintenance services. BFPE's bid under this line item was \$80,350. The bids for line item 0001 ranged from a low of \$67,396 to a high of \$182,000.

With respect to line item 0002, the indefinite quantity portion of the IFB, Olde Towne bid a total of \$5,330 while BFPE bid a total of \$23,970--second low only to Olde Towne for the line item. The bids for line item 0002 ranged from the Jardee's low price of \$5,330 to a high of \$76,730.

On the basis of totaling both line item prices, Olde Towne was the apparent low bidder at \$74,930 and BFPE was second at \$104,320. The Navy requested that Olde Towne review its bid carefully, giving special attention to the indefinite quantity subitems; in that request, the Navy asked Olde Towne to explain how the firm arrived at the prices for the indefinite quantity work and to verify the firm's overall bid price.

In response, Olde Towne--the incumbent at Oceana--confirmed its bid prices as submitted. The firm's president explained that he was its sole owner and did most of the fire system maintenance work himself. Further, he stated that, after a review of his own financial position and his present work load, he had decided to reduce the firm's bid as much as possible in an attempt to retain the contract. As his letter further explained in detail:

"When I prepared my bid I figured exactly what I could do the contract for and make a reasonable profit. I also realized that additional work had been added to this contract. After figuring my bid I placed the majority of the money on the fixed price portion knowing that I would be here doing the work myself. I then placed a lower

amount on the indefinite quantity line items knowing that my labor cost was already covered since I will be at Oceana anyway. I then added just enough to help cover the material costs. This provided for a lower indefinite quantity portion since I covered the labor under the fixed price portion."

Following a determination that Olde Towne was responsible based on the Navy's assessment of the firm's successful past performance at Oceana, award was made to Olde Towne on the basis of low overall price. BFPE then filed an agency-level protest,¹ which was denied; this protest to our Office followed.

First, BFPE generally contends that the awardee's artificially low prices for the indefinite quantity work rendered its bid nonresponsive and that the agency therefore was precluded from considering information provided by Olde Towne after bid opening to determine the acceptability of the firm's bid. Next, BFPE contends that the awardee's bid should have been rejected as materially unbalanced; underpinning this contention is the protester's argument that, by shifting all labor costs to the definite quantity portion of the contract, Olde Towne was effectively causing the government to make improper advance payments for costs attributable to labor on the indefinite quantity portion of the contract even if no such work was ever ordered.²

¹BFPE complains that the Navy improperly solicited the views of interested parties while considering the agency-level protest. There is no impropriety in such a practice and interested parties must be notified of an agency-level protest pursuant to Federal Acquisition Regulation (FAR) § 33.103.

²In its protest, BFPE also speculated that, as the result of inside knowledge obtained as an incumbent, Olde Towne knew that the government did not intend to order a substantial portion of the estimated quantities of work under line item 0002 and that the awardee tailored its bid accordingly. These matters were addressed in the agency report. In its comments on that report, BFPE declined to respond to the Navy's explanation concerning the development of the agency's estimates for line item 0002, their accuracy, and its plans to order the work as described in the RFP. We therefore find that BFPE has abandoned this allegation and we will not consider it further. Electric Sys. USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190.

With respect to BFPE's first assertion, although the protester has styled its protest as one questioning the "responsiveness" of Olde Towne's bid, the thrust of its allegation is that BFPE believes that, at least with respect to line item 0002, the bid submitted by the awardee is below cost. The submission of a below-cost bid is not illegal, however, and the government cannot withhold award simply because an otherwise responsive bid is below cost. International Serv. Corp., B-220006.2, Sept. 9, 1985, 85-2 CPD ¶ 282. In this case, there is nothing in the record to suggest that Olde Towne's bid represented anything other than an unequivocal offer to tender the exact performance called for in the IFB; thus, Olde Towne's low price alone for line item 0002 did not make the bid nonresponsive. Oregon Iron Works, Inc., B-247845, May 27, 1992, 92-1 CPD ¶ 474.³

Whether a bidder will perform a contract satisfactorily in light of its low bid is a question of the bidder's responsibility--a matter that the agency must resolve in the affirmative, as it did here, prior to award. This Office does not review affirmative determinations of responsibility unless the record shows that the determinations may have been made fraudulently or in bad faith or that definite responsibility criteria stated in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1992). The protester has alleged none of these exceptions here and the record does not otherwise disclose they existed. International Serv. Corp., supra.

Turning to BFPE's argument regarding unbalanced bidding, before a bid can be rejected as unbalanced, it must be found both mathematically and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. A bid may not be found mathematically unbalanced absent evidence that it contains prices which are overstated. IMPISA Int'l, Inc., B-221903, June 2, 1986, 86-1 CPD ¶ 506. A mathematically unbalanced bid is considered materially unbalanced and cannot be accepted where there is reasonable doubt that acceptance of the bid will result in

³Nothing in the bid-verification letter altered the unequivocal nature of Olde Towne's bid and we therefore find BFPE's assertion that the agency used that letter to convert a nonresponsive bid into a responsive bid to be without merit. The letter was submitted in response to an appropriate request for price verification which is required by FAR § 14.406-3(g) when the contracting officer suspects a mistake in bid.

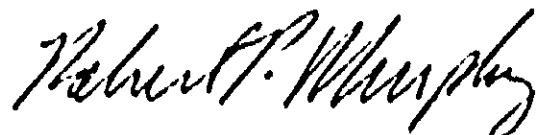
the lowest overall cost to the government, Star Brite Constr. Co., Inc., B-244122, Aug. 20, 1991, 91-2 CPD ¶ 173. Here, we find that Olde Towne's bid is neither mathematically nor materially unbalanced, since there is no evidence that it contains enhanced or overstated prices.

While it may be argued that Old Towne's prices for the subitems contained in item 0002 are "nominal" because they principally reflect material costs and are substantially lower than any other bidder's prices for the same subitems, there is simply no indication in the record, and the protester does not argue, that the awardee's lump-sum price of \$69,600 for line item 0001 was overstated. Olde Towne's lump-sum price for the routine services covered by line item 0001 was lower than BFPE's \$80,350 price and was the second lowest price tendered for that item.

Moreover, there is no reasonable doubt that acceptance of Olde Towne's bid will result in the lowest cost to the government. Olde Towne's overall price for all items is approximately \$30,000 lower than the overall price submitted by the BFPE--the next low bidder--and its prices for each of the two line items were lower than BFPE's prices.

Finally, since there is no evidence that Olde Towne overstated its price for the line item 0001 work, there is no possibility that the agency could make an improper advance payment to the awardee under that item. Star Brite Constr. Co., Inc., supra.

The protest is denied.



for James F. Hinchman
General Counsel