



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ogden Government Services

File: B-253350

Date: September 14, 1993

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East and Barnhill, for the protester.

John J. Duffy, Esq., and Gretchen L. Lowe, Esq., Piper & Marbury, for Tate Facilities Services, Inc., an interested party.

Luis A. Vidal, Esq., National Archives and Records Administration, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's offered prices for three alternative options were not impermissibly unbalanced where, even if one option was lower in price than another option encompassing more work, there is no indication that this lower price was offset by enhanced prices elsewhere, or that each element of contract performance did not bear its proportionate share of cost; protester therefore was entitled to award, since solicitation provided that evaluation would be based on price for base requirement plus option reflecting most likely scenario, and protester's proposal was lowest priced under this scheme.

DECISION

Ogden Government Services protests the award of a contract to Tate Facilities Services, Inc. under request for proposals (RFP) No. NAMA-92-N7-P-0020, issued by the National Archives and Records Administration (NARA) for building operations and maintenance services at NARA's headquarters building in Washington, D.C. Ogden argues that NARA improperly rejected its offer as materially unbalanced

We sustain the protest.

The RFP required firms to submit both technical and pricing proposals for two separate groups of services for a base year and four 1-year options. The first group of services consisted of NARA's operations and maintenance requirements

for the 5 years. The second group of services consisted of utility systems, refrigeration systems and heating, ventilation and air conditioning (HVAC) systems maintenance and repair. For this second group of services, firms were required to provide pricing based on three different levels of effort. The first level of effort (option 3a) called for providing all necessary management, supervision and labor to operate and provide watch, tour, and other assigned duties for the specified systems during one 8-hour shift per day, 7 days per week. The second level of effort (option 3b) called for providing the same services for two 8-hour shifts per day, 7 days a week. The third level of effort (option 3c) called for providing all necessary services and materials for the maintenance and repair of the specified systems 24-hours a day, 7 days a week. Under options 3a and 3b, the contractor's personnel essentially were required to be available to NARA's maintenance and repair office during either one or two shifts per day whereas, under option 3c, total responsibility for the designated systems was to be transferred to the contractor.

The solicitation provided that award would be made to the firm submitting the proposal representing the best overall value to the government, considering price and specified technical evaluation factors (not relevant here); although technical considerations were more important than price, where two or more proposals were determined to be technically equal, low price would be determinative for award purposes. Although the RFP stated that NARA could exercise any of the three level-of-effort options at any time during contract performance, proposals were to be evaluated using the offerors' prices for the option determined most likely to be exercised. Finally, the RFP provided that NARA could reject a proposal if it found that it was materially unbalanced in terms of price, among either the five contract years or the three different HVAC options.

In response to the solicitation, NARA received nine proposals. After evaluating the proposals, engaging in discussions and soliciting best and final offers, NARA determined that eight of the nine proposals were technically equal and one technically unacceptable. The award decision thus was based on low price. For price evaluation purposes, NARA used HVAC option 3c (under which the contractor would assume total responsibility for the designated building systems). Ogden's price for the basic requirement plus option 3c was the lowest. However, Ogden's option 3c price was lower than its option 3b price, even though option 3b only required the contractor to provide two 8-hour shifts per day. NARA requested that Ogden either confirm its prices or provide evidence of a mistake; Ogden confirmed its price. NARA thus concluded that Ogden's price was materially unbalanced among the three HVAC options, rejected

the proposal, and made award to Tate, the next lowest priced offeror. Upon learning of NARA's award decision, Ogden filed this protest.

Ogden argues that NARA improperly rejected its proposal as mathematically and materially unbalanced, since each base quantity and each optional level of effort bears its proportionate share of the firm's cost of performance during each of the contract's 5 years. According to the protester, its option 3c prices were lower than its option 3b prices, not because of some unbalancing strategy, but because having full operational responsibility for the HVAC systems permitted it to reconfigure its team of employees to eliminate one full-time position. Ogden states that this was not possible under the other two options, which required specific staffing to assist NARA's personnel. Ogden notes that NARA found its option 3c staffing approach to be technically acceptable, with no indication that the agency considered this proposed reconfiguration less desirable than other approaches.

NARA maintains that, because it does not know when (or whether) the three options will actually be exercised during the life of the contract, Ogden's pricing makes it impossible to determine that its offer will result in the lowest overall cost to the government. NARA concludes that it properly rejected Ogden's offer as materially unbalanced.

The concept of material unbalancing may apply in a negotiated procurement where, as here, price constitutes the primary basis for source selection. Stocker & Yale, Inc., B-249466.2, Jan. 29, 1993, 93-1 CPD ¶ 88. Determinations regarding whether an offer is impermissibly unbalanced have two aspects: (1) mathematical unbalancing, i.e., whether each contract item carries its proportionate share of the cost of the work specified, as well as overhead and profit, or whether some items are nominally priced while others reflect enhanced prices, and (2) material unbalancing, i.e., whether award based on a mathematically unbalanced offer would result in the lowest overall cost to the government. A materially unbalanced offer cannot be accepted. Id.; see also Federal Acquisition Regulation (FAR) § 15.814.

We do not agree with NARA that Ogden's offer is impermissibly unbalanced. Our review of the firm's proposal confirms, and NARA does not point to evidence showing otherwise, that each element of contract performance bears its proportionate share of cost; Ogden did not offer significantly enhanced pricing for some contract elements or below-cost pricing for others. NARA's conclusion that Ogden's proposal is unbalanced is based solely on the fact that Ogden's option 3c price is lower than its option 3b price. However, even if Ogden purposely priced option 3c

below its cost, since there are no offsetting enhanced prices elsewhere, this itself would not provide a basis for finding the proposal unbalanced.

Moreover, it is not even clear that Ogden's low option 3c price understated the firm's cost. In this regard, we find nothing unreasonable in Ogden's position--as reflected in its technical proposal--that having full responsibility for performing the HVAC work would enable it to staff the HVAC function more efficiently, and thus more cost effectively, than under the options where the structure of the staff and scheduling would be set by the agency. Ogden's technical proposal clearly set forth this reduced staffing approach for option 3c and, as indicated above, it was evaluated as technically acceptable and equal to the other offerors' approaches.¹

We conclude that Ogden's proposal was neither mathematically nor materially unbalanced.

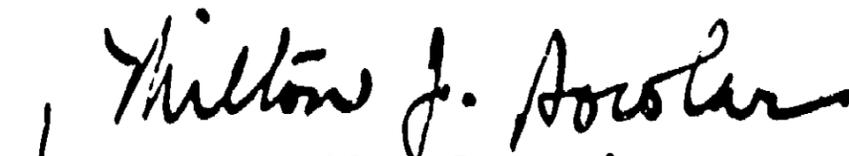
There are, as the agency argues, possible scenarios (i.e. concerning whether and when the different options would be exercised) under which award to Ogden would not result in the lowest overall cost to the government. While Ogden's proposal could ultimately result in a higher cost to the government than Tate's proposal, so too could Tate's proposal ultimately result in a higher cost, depending on which of the various options are exercised under the contract. The RFP provides that "[a]t the time of price evaluation, the Government shall determine which option (3a, 3b, or 3c) is most likely to be exercised by the Government and shall evaluate price proposals accordingly." Apparently believing that this language permitted only one option to be used for evaluation, NARA selected option 3c, under which Ogden would be the low offeror. However, the agency's technical and price evaluation memorandum prepared in March states that "the Program Office informed [the contracting office] that it would most likely exercise the basic requirement plus option 3 [3c] with a unilateral right of exercising the basic requirement plus option 1 [3a] at the start-up of the contract."

¹NARA's brief in response to the protest speculates that Ogden would have received a lower technical score had NARA "recognize[d] the significance" of Ogden's plan to eliminate a position under option 3c. Ogden's proposal was explicit in this regard, and in responding to the protest, the contracting officer affirmed his view that the technical evaluations were "executed properly."

In our view, given the agency's professed belief that both options 3a and 3c will be exercised at some time during the contract, NARA should reevaluate the offerors' total prices by adding the most likely combination of options to be exercised over the course of the contract. The basis for award should reflect the agency's anticipated needs as closely as possible.

Consequently, by separate letter of today to the Archivist of the United States, we are recommending that the offerors' proposals be reevaluated. If it is determined that a firm other than Tate is the successful firm, Tate's contract should be terminated for the convenience of the government, and award should be made to the otherwise successful offeror. We find Ogden entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f)(1), Ogden's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted to NARA within 60 days after receipt of this decision.

The protest is sustained.


for Comptroller General
of the United States