



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

100-311

Decision

Matter of: Wizards-Movers Elite, Inc.; Elkay
Transportation, Inc.

File: B-255753; B-255753.2

Date: March 29, 1994

Ronald B. Greene, Esq., for Wizards-Movers Elite, Inc., and Matthew A. Kane, Esq., Kane and Koons, for Elkay Transportation, Inc., the protesters. Judith A. Bonner, Esq., and Emily C. Hewitt, Esq., General Services Administration, for the agency. M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging propriety of method of award, which was apparent from the solicitation, is untimely when filed after bid opening.
2. Bid containing line item prices which may be below cost is not unbalanced where bid does not contain overstated prices for any line item.

DECISION

Wizards-Movers Elite, Inc. and Elkay Transportation, Inc. protest award of a contract to Business Relocators, Inc. under invitation for bids (IFB) No. 3FBG-W-EC-S-5140, issued by the General Services Administration (GSA) to acquire moving services. The protesters argue that the award formula was defective and that the awardee's bid should have been rejected as materially unbalanced.

We dismiss the protests in part and deny them in part.

The solicitation sought bids for labor and equipment in connection with moving services for the National Institutes of Health. The IFB anticipated award of a requirements contract for a base year and 4 option years. The solicitation requested bidders to provide rates per hour for eight contract line item numbers (CLIN) of various service on a straight time, overtime and holiday time basis and provided estimated numbers of personnel per day for each line item. CLINs 1 through 4 were for routine service. The remaining CLINs, 5 through 8, were for the

identical services, except that they were for major moves and had different personnel estimates. Major moves were defined by the IFB to include an entire organization, involving from 70 to several hundred government employees. The solicitation provided an estimate of 12 to 20 moves per year, stated that the quantity of major moves would vary from year-to-year, and that there would not be more than 3 major moves in some 12-month periods. Evaluated prices were to be determined by multiplying the hourly bid prices for straight time by the estimated number of personnel and adding the resulting extensions. Award was to be made to the low aggregate bidder, which was to be determined by "adding the total price for all options to the basic requirements."

Of the 11 bids received, Business Relocators' bid of \$4,763.65 represented the lowest evaluated price; Wizards' evaluated price of \$5,048.11 was the second low. The third low bid of \$5,627.50 was rejected as unbalanced, and as result Elkay's bid of \$6,463.88 became third low.

The three low bidder's hourly prices were as follows:

CLIN Nos.	Routine Moves				Major Moves			
	1	2	3	4	5	6	7	8
Business Relocators	\$14.98	\$10.95	\$11.75	\$24.00	\$10.00	\$ 8.60	\$ 8.60	\$12.00
Wizards	\$16.53	\$ 9.37	\$10.28	\$35.00	\$13.53	\$ 9.37	\$10.28	\$35.00
Elkay	\$20.09	\$10.45	\$12.06	\$24.29	\$20.09	\$10.45	\$12.06	\$24.29 ²

The agency intends to make award to Business Relocators based on its low evaluated price.

Both protesters allege that the method of award formula was defective because equal weight was assigned to routine moves and major moves. According to the protesters, the

¹The CLINs and estimated personnel were as follows:

1. Vehicle with driver-21
2. Laborer/helper-26
3. Crew leader (working supervisor)-3
4. Tractor trailer with driver (as-needed basis)-1
5. Vehicle with driver-5
6. Laborer/helper-25
7. Crew leader-2
8. Tractor trailer with driver (as-needed basis)-1

²The bidder whose bid was rejected as unbalanced bid as follows on CLIN Nos. 1 through 8: 1-\$22, 2-\$15.50, 3-\$15.50, 4-\$16, 5-\$6, 6-\$6, 7-\$6, and 8-\$6.

structure of the award formula resulted in bidders offering unrealistically low prices for the major move services, which are likely to be used infrequently, in order to artificially depress their total evaluated prices. Elkay further contends that the method of award formula was unclear as to whether option prices were to be included in the determination of the low bid.

These bases of protest concern apparent solicitation improprieties. Our Bid Protest Regulations provide that a protest based on an alleged impropriety in a solicitation which is apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1993). Since the protests challenging the method of award were not filed until after bid opening, they are untimely and will not be considered.

Both protesters further allege that the awardee's bid is materially unbalanced and should have been rejected--Wizards contends that the awardee "undercut their prices on the [major move] services just to get the contract"; and Elkay alleges that the awardee bid unrealistically low prices on the major move services.³

To be rejected as unbalanced, an offer must be both mathematically and materially unbalanced. Hampton Rds. Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486. A bid is mathematically unbalanced where it contains understated prices for some items and overstated prices for other items. Id. The submission of a below-cost bid is not illegal, and the mere fact that a bid includes understated prices does not justify rejection of the bid. Nissho Iwai Am. Corp., et al., B-254870 et al., Jan. 24, 1994, 94-1 CPD ¶ _____. Accordingly, even a well-founded allegation of understated prices, without an assertion of overstated prices, does not constitute a legally adequate basis for finding that an offer is mathematically unbalanced. Atlantic Research Corp., B-247650, June 26, 1992, 92-1 CPD ¶ 543.

Even if the protesters are correct that Business Relocators' major move prices are inordinately low, they have offered no rationale which could support a finding that Business Relocators' routine moves prices were inflated or otherwise excessive, and nothing in the record indicates that this was the case. We note in this regard that under the only two line items where Business Relocators' bid exceeded Wizards' (CLINS 2 and 3), the difference was only 14 percent and

³Elkay also argues that Wizards' bid was unbalanced because the firm bid lower prices for the major move services in the option years than in the base year.

13 percent, respectively. See Hampton Bus. Leasing, Inc., supra. Business Relocators' prices also do not appear to be overstated compared to the prices submitted by the other bidders. The proposed prices for CLIN 1 ranged from \$14.98 to \$31.00; for CLIN 2 from \$9.37 to \$12.00; for CLIN 3 from \$10.28 to \$21.00; and for CLIN 4 from \$16.00 to \$22.00. Again, Business Relocators' proposed prices of \$14.98, \$10.95, \$11.75, and \$24.00 for CLINs 1 through 4, respectively, in no way suggest that a disproportionate share of the performance cost was loaded into these items. Since there is no indication in the record that Business Relocators' bid was overstated for one or more items, there can be no finding that the bid was mathematically unbalanced.⁴

The protests are dismissed in part and denied in part.

Robert P. Murphy
Robert P. Murphy
Acting General Counsel

⁴Accordingly, the bid cannot be mathematically unbalanced. Since there is no indication of unbalancing in Business Relocators' bid, Elkay is not an interested party to challenge Wizards' bid because Elkay would not be in line for award even if its protest were sustained. See 4 C.F.R. § 21.0(a) and 21.1(a); INTERLOG, B-249613 et al., Oct. 26, 1992, 92-2 CPD ¶ 282.