



Comptroller General  
of the United States

442301

Washington, D.C. 20548

## Decision

**Matter of:** Consolidated Photo Copy, Inc.  
**File:** R-258635  
**Date:** January 31, 1995

### DECISION

Consolidated Photo Copy, Inc. (CPC) protests the award of a contract to Fairfax Opportunities Unlimited under request for proposals (RFP) No. EMS-94-R-0003, issued by the United States Department of Agriculture (USDA) for copy center, mail room and supply room operations services. CPC argues that Fairfax's offer was materially unbalanced, and that Fairfax will not use disabled employees for at least 75 percent of the contract's direct labor, as required by the RFP.<sup>1</sup>

We dismiss the protest.

The RFP contemplated the award of a fixed-price, requirements-type contract to operate the copy center (including supply and maintenance of a number of satellite copiers throughout the facility), mail room and supply room at one of USDA's facilities in Washington, D.C. for a base year and four 1-year options. For purposes of preparing their offers, firms were provided estimates of the number of copies that would be required per year, as well as the number of manhours required to operate the mail and supply rooms. The solicitation was set aside for small business concerns but also provided that organizations for the disabled could participate in the acquisition. In this latter regard, the RFP stated that an organization would be considered a public or private organization for the disabled if, among other things, disabled employees were used to

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<sup>1</sup>CPC also alleges that Fairfax will not meet the requirement to use disabled employees for at least 75 percent of its direct labor because the RFP required the awardee to offer government employees currently performing this work (who are not handicapped) a right of first refusal for employment. During the course of this protest, the agency advised our Office that the government employees declined offers of employment from Fairfax. We therefore dismiss this aspect of CPC's protest as academic. CardioMetrix, B-257408, Aug. 3, 1994, 94-2 CPD ¶ 57.

perform at least 75 percent of the direct labor required under the contract.<sup>2</sup>

The agency received several offers, including the protester's and Fairfax's. The protester is a small business, while Fairfax certified itself as a not-for-profit private organization for the disabled. After evaluating the offers, establishing a competitive range, conducting discussions and soliciting best and final offers, the agency determined that it would make award to Fairfax; the record shows that Fairfax had the highest-rated proposal from a technical standpoint, and offered the lowest overall price.

CPC argues first that Fairfax's offer was materially unbalanced as between the contract line items (CLIN) for providing copies and the CLINs for operating the mail and supply rooms. According to CPC, Fairfax's proposed per-copy price is below the cost of producing copies, while its per-hour wage rate for the employees working in the mail and supply rooms is more than 100 percent higher than the Service Contract Act wage rates provided in the RFP. CPC therefore maintains that Fairfax's offer was both mathematically and materially unbalanced.

A bid or offer that is mathematically and materially unbalanced may not be accepted for award. Capitol Paving of D.C., Inc., B-256896, July 5, 1994, 94-2 CPD ¶ 10; Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465. A bid or offer is mathematically unbalanced where it is based on nominal prices for some items and enhanced prices for other items. Capitol Paving of D.C., Inc., supra. Where there is reasonable doubt that acceptance of a mathematically unbalanced bid or offer will result in the lowest overall cost to the government, the bid or offer is also materially unbalanced. Id.

Within the context of requirements-type contracting, it must be shown not only that a bid or offer is mathematically unbalanced, but also that the solicitation is based on inaccurate quantity estimates for the various line items, since acceptance of a mathematically unbalanced bid or offer would result in other than the lowest cost to the government only where the government actually orders more of the items for which enhanced pricing has been offered and less of the items for which nominal pricing has been offered. Capitol Paving of D.C., supra. Thus, a low bid or offer under a requirements-type contract may not be rejected merely because it is mathematically unbalanced as between line

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<sup>2</sup>This 75-percent requirement reflects the requirements of the Javits, Wagner-O'Day Act, 41 U.S.C. § 46 et seq. (1988), for a firm to qualify as an organization for the disabled.

items, since there is no reason to assume--absent a showing that the estimated quantities are inaccurate--that acceptance of the bid or offer will not result in the lowest cost to the government. Id.

Here, while CPC has alleged that Fairfax's bid is mathematically unbalanced between the copy center CLINs and the mail and supply room CLINs, the firm has neither alleged nor shown that the agency's estimated quantities for these CLINs are inaccurate. Consequently, even if CPC were correct that Fairfax's pricing is mathematically unbalanced, it still has not shown that Fairfax's offer is materially unbalanced, since award to Fairfax will in fact result in the lowest overall cost to the government based on the estimated quantities found in the RFP.

CPC also maintains that Fairfax did not propose sufficient handicapped employees to meet the RFP's minimum requirements. According to CPC, Fairfax offered to use one non-disabled employee to operate the copy center and two disabled employees to operate the mail and supply rooms. Since this scheme results in only 66 percent handicapped employees, CPC concludes, Fairfax's proposal does not meet the 75-percent requirement.

This allegation is without merit. While Fairfax did propose a non-disabled employee to operate the copy center, it intends to fill the remaining positions using what it describes as an "enclave" of disabled employees. As explained by Fairfax,<sup>3</sup> this enclave is comprised of a minimum of three disabled employees and could include as

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<sup>3</sup>We conducted a hearing in connection with this protest. At the hearing, Fairfax's Government contracts manager provided testimony relating to how the firm typically staffs a contract, as well as how it intends to staff this particular contract.

many as five. The record thus shows that, at a minimum, three out of four--or 75 percent--of Fairfax's employees will be disabled.<sup>4</sup>

The protest is dismissed.



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<sup>4</sup>Measuring Fairfax's direct labor in terms of number of labor hours also leads to the conclusion that its proposal is acceptable in this area. Although Fairfax's supporting cost data shows slightly less (73 percent) than 75 percent handicapped labor hours, these numbers were only estimates. In this regard, at the hearing held in this matter, Fairfax's government contract manager testified that estimates must be used because the firm is unable to determine, prior to beginning performance, precisely how many disabled individuals will comprise the enclave.