ASL-gen

Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Astrosystems, Inc.

File: B-260399.2

Date: July 11, 1995

Leonard G. Birnbaum, Esq., and Brett A. Alcala, Esq., Birnbaum & Umeda, for the protester.
Mark Stephen Syrnick, Esq., Harris Technical Services Corporation, an interested party.
Denise A. McLane, Esq., Department of the Navy, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Awardee's offer for repair, overhaul, and modification of avionics testing systems over 5 years--2 base with 3 option--is not materially unbalanced where protester fails to show that reasonable doubt exists that award to the firm will result in the lowest ultimate cost to the government.

DECISION

Astrosystems, Inc. protests the award of a contract to Harris Technical Services Corporation (HTSC) under request for proposals (RFP) No. N00383-93-R-0509, issued by the Department of the Navy, Aviation Supply Office (ASO), for the repair, overhaul, and modification of aircraft testing systems. Astrosystems primarily argues that HTSC's proposal should have been rejected for unbalanced pricing.

We deny the protest.

The solicitation contemplated award of a fixed-price, indefinite quantity requirements contract for 2 base years with 3 option years to furnish the labor, material, and facilities necessary for the repair, overhaul, and modification of five testing systems used to test avionics on Navy aircraft, and for operation of the Contractor Aviation Material Management System (CAMMS) reporting system. The solicitation requested line item unit prices for repairing/overhauling 1,535 different parts and assemblies, for each of which it included an estimated requirement for each year. The RFP stated that award would be made to the low acceptable offeror; it provided for

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calculation of an offeror's total price by adding its extended prices for the option and base years to its prices for CAMMS reporting.

ASO issued the solicitation only to the two approved sources for repair of the testing systems: (1) Harris, the incumbent contractor for 22 years, and (2) Astrosystems, which recently qualified as a source and has been a subvendor to Harris for the repair of many of these parts and the manufacturer of a number of the items. (ASO determined that full and open competition was not feasible because of the high cost required for another offeror to qualify--the contractor would need access to approximately 200,000 drawings, many of which were not available to the Navy in their latest version, and specialized test equipment--and the fact that current avionics test systems were scheduled to be replaced by December 1998.)

As issued, the solicitation required offerors to list desired government-furnished property (GFP) and provided for assessment of an evaluation factor where an offeror proposed to use GFP on a rent-free basis. After receipt of initial proposals, however, ASO determined that the applicable evaluation factor would be unrealistic when considered over a 5-year period, since it would exceed the cost of the equipment; the agency therefore amended the RFP to delete the evaluation factor from the evaluation and requested best and final offers (BAFO).

As set forth below, Harris submitted the low overall BAFO price.

	HTSC	Astrosystems
First Base Year	$5,131,853	$4,775,754
Second Base Year	5,078,248	4,209,402
First Option Year	3,516,736	3,703,022
Second Option Year	2,481,911	3,667,665
Third Option Year	2,481,911	3,628,723
TOTAL FIVE YEARS	$18,690,659	$19,984,566
CAMMS Reporting	248,126	100,000
TOTAL AGGREGATE PRICE	$18,938,785	$20,084,566

Upon learning of the resulting award to HTSC and the awardee's prices, Astrosystems filed this protest with our Office.

Astrosystems contends that ASO should have rejected HTSC's proposal as unbalanced because it contained nominal prices for some line items and overstated prices for others, resulting in a front-loaded offer that is not low until the fourth year. Further, Astrosystems alleges that the estimates upon which ASO evaluated proposals were faulty. According to the protester, demand will decline in the later years of the contract, not remain steady as assumed in the solicitation estimates, as the new test system is introduced and the current test systems to be supported under the contemplated contract are deactivated. In addition, Astrosystems generally argues that HTSC's pattern of pricing some items at nominal prices and other items at allegedly overstated prices was presumably based on inside information concerning past demand acquired as the incumbent contractor and at variance with the solicitation estimates, and thus demonstrates that the estimates were inaccurate. In this regard, Astrosystems notes that the record includes an agency document dated August 1993 which lists "[t]he computed number of units of recurring demand expected to be received in the system for an item per quarter during procurement leadtime." The August 1993 estimate appears to forecast for a number of items a lesser demand in the period leading up to award than specified in the solicitation estimates for the 5-year contract period. Although Astrosystems generally questions the agency's failure to use the 1993 estimate, its specific argument focuses on the 1993 estimate's listing of recurring quarterly demand during the procurement leadtime as "0.00" units for a number of the many items for which the solicitation estimates stated a yearly demand of one unit.

HTSC does not deny that its proposal contains nominal prices for a large number of items. HTSC priced numerous line items at the nominal price of $10 per unit for all 5 potential contract years and priced other items at $10 per unit for the option quantities, including items priced as much as $5,923 per unit for base year quantities. In response to Astrosystems's protest, HTSC explains that it did not accept ASO's estimates of future demand and instead based its pricing on its own estimates. According to HTSC:

> "HTSC chose to disregard the 'estimated annual quantities' provided by the Navy in RFP 0509 since it did not believe that the quantities [would] remain constant from year to year as the solicitation stated.
>
> "Based on an analysis of historical demand over the past five years, HTSC assigned a nominal price of $10 per item for each line item that HTSC had never repaired (zero demand) under the previous basic ordering agreement. . . .

> "In years 3, 4 and 5 of the contract, HTSC projected that the demand for items would start to decline as the [current testing systems] were phased out of the Navy's fleet and that ready for issue spares would return to stock from operating sites. HTSC assigned the nominal price of $10 per item for line items in those [option] years which experienced very small yearly average demands during the previous five years. This risk was assessed and judged to be acceptable based on HTSC's business projections. These projections resulted in some line items being fully priced in the first two or three years and being assigned the $10 nominal price in the latter years of performance."

Both ASO and HTSC deny that HTSC's proposal contains overstated prices. In particular, ASO notes that HTSC's proposed prices were no more, and often lower, than the historical prices previously paid by the agency for all but a few--apparently fewer than 5--of the 1,535 items notwithstanding the fact that the contractor under the contemplated contract must furnish the piece parts necessary for repair while previously the government furnished such parts. Further, ASO maintains that the solicitation estimates of future demand were based on the best available information.

A price-based offer that is mathematically and materially unbalanced may not be accepted for award. Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455; Capitol Paving of D.C., Inc., B-256896, July 5, 1994, 94-2 CPD ¶ 10. A bid is mathematically unbalanced where it is based on nominal prices for some items and enhanced prices for others. Sanford Cooling, B-242423, Apr. 15, 1991, 91-1 CPD ¶ 376. Where there is a reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

With regard to estimated quantities in requirements-type solicitations, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimates of the agency's anticipated needs. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126; Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ 72. Unless it can be shown that the agency's estimates--which are supposed to be reasonably accurate representations of the agency's anticipated actual needs--are not reliable, Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248, a low evaluated bid under a requirements-type solicitation cannot be rejected merely because it is mathematically unbalanced since there would be no reason to believe that acceptance of the low bid would not actually result in the lowest cost to the government. DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591.

Here, although Astrosystems was aware of the planned transition to the new testing systems, it did not protest use of the solicitation estimates until after the award to HTSC. If Astrosystems believed that the solicitation contained inaccurate, overstated estimates with respect to likely demand in the later years of the contract such that offerors could devise a pricing approach to take advantage of the allegedly defective estimates, Astrosystems should have protested on this basis before the closing time. See 4 C.F.R. § 21.2(a)(1) (1995); Capitol Paving of D.C., Inc., supra.

In any case, ASO reports that based on the best information currently available it expects the demand for repairs on the current test systems to remain constant through the end of the contract in January 2000. Although, as noted by the protester, a Justification and Approval (J&A) for limited competition executed in December 1994 indicated that the current test systems to be supported under the contemplated contract were to be replaced by December 1998, ASO reports that delays have been encountered in the deployment schedule for the hardware and software which will connect the avionics systems being tested to the new testing system. In addition, the agency notes that the new testing system must be configured for the specific requirements of each site. According to the agency, conversion to the new test system will be gradual and the current test systems must be kept operational until the new system is completely deployed and fully operational. Further, ASO states that any decrease in the need for reliance on the current test systems is expected to be offset by an increase in the likely repair rate for the remaining units as they age over the life of the contract.

As for Astrosystems's more general claim that HTSC's pricing approach was evidence that the solicitation estimates were defective because they were inconsistent with past demand, again, it appears from the record that this argument is untimely. As noted by the protester, the agency furnished offerors, in solicitation amendments, questions submitted by HTSC--the only other qualified source--concerning the estimates, and answers from the agency. HTSC first asked:

> "17. Based on historical data, it appears that the quantities identified as the target and the maximum are unrealistically high. What is the

> basis used in determining these quantities and will corrections be forthcoming?
>
> "18. In reviewing the quantities ordered against various [contract line item numbers], it is obvious that there are significant discrepancies between historical data and the [contract line item number] requirements. Will the government correct these estimates?"

When ASO affirmed the estimates, stating simply that they were accurate and would remain as stated, HTSC again questioned the estimates on the basis that the quantities "are substantially higher than quantities actually received over the past five years." In its response, provided with an amendment to the solicitation, ASO again refused to change the estimates. Astrosystems's failure to protest that the estimates were at variance with historical demand, an assertion brought to its attention by the incumbent contractor's questions, prior to the closing time precluded the possibility that corrective action could be taken, if warranted, before the expenditure of significant time and effort and the exposure of the award prices. Astrosystems's delay renders its protest in this regard untimely. See District Moving & Storage, Inc., et al., supra.

In any case, again, its position is not persuasive. As noted above, Astrosystems's specific challenge to particular solicitation estimates focuses on the alleged discrepancy between the August 1993 internal agency estimate of a recurring quarterly demand during procurement leadtime of 0.00 units for the many items for which the solicitation estimates specified an annual demand of 1 unit during the 5-year period of contract performance. Notwithstanding Astrosystems's position to the contrary, however, we do not believe the fact that the 1993 estimate forecast a recurring quarterly demand during the procurement leadtime of 0.00 units for an item establishes that a subsequent solicitation estimate of 1 unit per year after contract award--in January 1995--was defective. The record provides no basis for concluding that there was no possibility that repairs of these parts would never be necessary. In our view, an estimated yearly demand of one unit appears to be a reasonable attempt to account for the possibility, albeit perhaps small, that the part might fail and, by providing for its evaluation, assure receipt of a reasonable repair price.

Astrosystems argues that, irrespective of the accuracy of the solicitation estimates, there is reason to doubt that acceptance of HTSC's offer, which it alleges contains overstated prices, will result in the lowest cost to the government. Noting that HTSC's proposal does not become low until the fourth contract year, Astrosystems questions whether the options will be exercised. Specifically, the protester notes that the 1994 J&A for limited competition stated that "each source will have the opportunity to compete for work at the end of the base two year period and prior to the exercise of each successive option year."

ASO denies that the quoted language from the J&A was intended to indicate that the options will not be exercised or that a new competition will be conducted prior to the exercise of the options. Rather, according to the agency, the quoted language was intended to indicate that the agency will comply with the general requirement, in Federal Acquisition Regulation § 17.207, to survey the market prior to the exercise of any option. In any case, the agency maintains that it foresees no impediments to exercise the options, and in fact, currently expects to exercise the options.

Notwithstanding a contracting agency's intent to exercise all options, we have recognized sufficient reason to doubt the low ultimate cost anticipated from a mathematically unbalanced offer where it does not become low until very late in the contract term, including option years, because as the contract goes on, it becomes increasingly likely that intervening events could cause the contract not to run full term, resulting in a higher cost to the government than otherwise would occur if a balanced offer were accepted. Eastex Maritime, Inc., B-256164, May 19, 1994, 94-1 CPD ¶ 340. Such intervening events relate not only to the agency's procurement plans to exercise all options, but also to the risk that future requirements could change, such that the options no longer reflect the government's actual requirements, or that termination for default may be necessary, before a front-loaded contract price actually provides the lowest ultimate cost to the government. Id.

Here, the record generally supports the reasonableness of the agency's position that exercise of the options is reasonably likely such that there is no reasonable basis to doubt that HTSC's offer will result in the lowest ultimate cost to the government. HTSC's proposal becomes low during the second option (1998) year of the contract, not in the last year. Further, Astrosystems has not argued, nor is there any basis for concluding, that the requirement for repair and maintenance of the current avionics testing systems, which are used to maintain Navy aircraft in flying condition, will end before the time for exercise of the 1998 option. (Indeed, even the December 1998 date for deployment of the new testing system which was referenced in the 1994 J&A, and which does not appear to reflect the delays in the program, would require continued operation and maintenance of the current testing systems during 1998.) In addition, with HTSC having successfully provided the services for 22 years, the termination for default of its contract appears unlikely. In these circumstances, we find no basis to question ASO's determination that award to HTSC will result in the lowest ultimate cost to the government. See Tri-Cor Indus., Inc., B-248160; B-248161, July 27, 1992, 92-2 CPD ¶ 56.[1]

Astrosystems argues that in deleting the provision for a GFP evaluation factor from the solicitation shortly before the closing time for BAFOs, ASO failed to comply with the requirement in FAR § 45.201 to eliminate any competitive advantage accruing to a contractor possessing GFP. However, Astrosystems's failure to protest in this regard until after the closing time and award precluded the possibility that corrective action could be taken, if warranted, before the expenditure of significant time and effort and the exposure of the award prices. Astrosystems's delay renders its protest in this regard untimely. See District Moving & Storage, Inc., et al., supra.

The protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel

[1]Astrosystems also argues that HTSC's pricing violates the "Integrity of Unit Prices" provision incorporated in the solicitation. This provision requires that offerors distribute costs within contracts on a basis that ensures that unit prices are in proportion to actual costs and prohibits methods of distributing costs to line items that distort unit prices. To succeed in a protest of alleged violations of this provision, the protester must establish both that the violations exist and that the protester was prejudiced by the improper pricing methods. See, e.g., Integrated Protection Sys., Inc., B-229985, Jan. 29, 1988, 88-1 CPD ¶ 92. As noted above, however, we find no basis to question ASO's determination that award to HTSC is proper because it will result in the lowest ultimate cost to the government. Given the absence of prejudice to Astrosystems, there is no basis to sustain its protest with respect to HTSC's alleged violation of the "Integrity of Unit Prices" provision. Allstate Van and Storage, Inc., B-238320, Apr. 26, 1990, 90-1 CPD ¶ 431.