

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-213390

DATE: July 10, 1984

MATTER OF: ABC Siding & Remodeling

DIGEST:

Allegation of bid unbalancing by transferring costs from item 1 to item 2 in order to circumvent statutory cost limitation is unproven where validity of government cost estimate for item 1 is not contested or proven and bidders' bid prices for that item were proximate to cost estimate.

ABC Siding & Remodeling (ABC) protests the acceptance of any other bid under Department of the Air Force, Malmstrom Air Force Base, invitation for bids No. F24604-83-B0055 for the repair of, and the construction of an addition (alteration) to, the base administration building.

We deny the protest.

Bidders were required under the invitation bid schedule to submit prices for bid items 1 (Alteration) and 2 (Repair) and a lump-sum price, which was the basis for award. Bidders were advised in the schedule that "The statutory cost limitation for all work . . . designated as bid item 1 is \$200,000," and the following:

"COST LIMITATION (1974 APR) (DAR 7-2003.27)

"A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or

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(ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installations and Logistics) prior to award."

The three bids received were:

	Item 1	Item 2	Lump Sum
ABC	\$224,149	\$ 56,994	\$281,430
Garrett-Heikens, Inc.	197,314	93,460	290,774
Dick Olson Construction	192,880	105,000	297,880

The contracting agency rejected the ABC bid as nonresponsive because the ABC price for item 1 exceeded the \$200,000 statutory cost limitation. Award was made to Garrett-Heikens, Inc., on the basis of its low lump-sum price.

ABC originally contended that the statutory cost limitation for item 1 should be waived because its lump-sum price was low and because it believed the other bids were nonresponsive as materially unbalanced to come within the item 1 statutory cost limitation. ABC now appears to accept that the limitation could not be waived. See Skip Kirchdorfer, Inc. and David Elder Construction Company, Inc., B-204244, November 24, 1981, 81-2 C.P.D. ¶ 425, where we upheld the rejection of a bid when the nonresponsive bid price exceeded a statutory cost limitation. While ABC argues that it should be awarded a contract for item 2 (the work on item 1 has been completed) because of the alleged nonresponsiveness of the other bids, the solicitation prohibited separate awards.

The Air Force first contends that the evidence does not show that the other bidders' bid price structures constituted attempts to circumvent the statutory cost limitation, citing Chrysler Corporation, B-182754, February 18, 1975, 75-1 C.P.D. ¶ 100. In that decision, we held that Chrysler's admitted high prices (97 percent higher than the suggested retail prices) for additional equipment gave rise to an inference that part of the basic vehicle cost had been transferred into the additional equipment prices; thus, Chrysler had attempted to circumvent the statutory price limitation on the basic vehicle. Because the two allegedly responsive bids here differed by only 28 percent on item 1 and by only 12 percent on item 2, the agency concludes that the prices of these two bidders were competitive and that neither bidder transferred costs and profit/overhead from item 1 to item 2.

Second, the Air Force contends that even if the rules on unbalanced bids apply, these two bids are responsive. In Microform, Inc., B-208117.2, September 27, 1983, 83-2 C.P.D. ¶ 380, we held that even though some of the bidder's item prices were merely nominal, the bid could not be considered unbalanced and nonresponsive because the bidder's remaining prices had not been enhanced. Even if it were to be accepted that the two bid prices on item 2 were high, the prices on item 1 were not nominal and, thus, the item 1 prices contained their share of the reasonable cost of the work. Therefore, the bids are not mathematically unbalanced. It is further noted that the original cost estimate (\$37,690) for item 2 was recomputed after ABC filed its protest to show a cost of \$74,126. The difference between this new estimate and the ABC item 2 price (\$74,126 less \$56,994) is about 30 percent of the ABC item 2 price. These figures, it is contended, do not show the other bidders' item 2 prices, which differed by only 12 percent, to be unreasonable.

ABC responds, first, by noting that in Chrysler Corporation, B-182754, supra, the prices making the bid nonresponsive were 97 percent greater than what they should have been; here, the other bidders' item 2 prices were over 100 percent greater than the original government estimate of \$37,690 and 64 and 84 percent, respectively, greater than the ABC item 2 price. Second, ARC suggests that the agency's correction, following the protest, of the item 2 estimate to \$74,126, twice the original estimate, clearly shows that the other two bids are mathematically and materially unbalanced, and that the Air Force was biased against the protester. This occurred despite the fact that ABC agreed to perform the item 2 work at its bid price, which was \$36,000 lower than the award price.

Our Office has recognized the twofold nature of bid unbalancing. First, the bid must be evaluated mathematically to determine whether it is unbalanced. This evaluation focuses upon whether each bid item carries its share of the cost of the work and of the contractor's profit/overhead or whether the bid is based upon nominal prices for some work and enhanced prices for other work. Second, if found to be mathematically unbalanced, an assessment must be made of the cost impact of that bid. Unless there is a reasonable doubt that, by making award to a party submitting a mathematically unbalanced bid, the award will not result in the lowest ultimate cost to the government or evidence of some irregularity of such substantial nature as will affect the competitive bidding system, the bid should not be

considered materially unbalanced. Oswald Brothers Enterprises, Incorporated, B-180676, May 9, 1974, 74-1 C.P.D. ¶ 238.

Applying these principles, even assuming these two bids were mathematically unbalanced, there must also be material unbalancing, that is the issue of whether an award will result in the lowest ultimate cost to the government. 49 Comp. Gen. 335 (1969). We have found material unbalancing only where estimates for the work are not valid or where evaluated option years are not reasonably expected to be exercised. Oswald Brothers Enterprises, Incorporated, B-180676, supra; Edward B. Friel, Inc., B-183871, October 14, 1975, 75-2 C.P.D. ¶ 233; K. P. Food Services, Inc., 60 Comp. Gen. 1, 82-1 C.P.D. ¶ 289. Since these situations do not exist here, the bid prices could not be considered materially unbalanced.

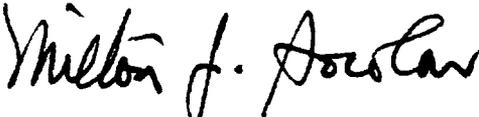
We stated in Chrysler Corporation, B-182754, supra, that the controlling question is whether the two bids contained defective price structures to circumvent the solicitation's statutory cost limitation, which would adversely affect the competitive bidding system. Based on our analysis below, we cannot conclude that these two bidders transferred part of their costs/profit/overhead from their item 1 bid prices to the item 2 prices to circumvent the statutory cost limitations on item 1.

ABC has not disputed the government's item 1 estimate or the corrected item 2 estimate. ABC's assertion of bias due to the correction alone does not disprove the validity of the correction. Given this, the spreads between the bids and the government estimates do not show any impropriety. On item 1, the ABC price was only 13.6 percent higher than the awardee's for that item and only 16.4 percent higher than the price submitted by the high bidder. The prices submitted by these bidders on item 2 were 63.9 (the awardee) and 84.2 (the high bidder) percent higher than the item 2 price submitted by ABC. As regards the government cost estimate for item 1 (\$186,771), the awardee overbid this by merely 5.6 percent, the high bidder by 3.3 percent, and ABC by 20 percent. Further, the awardee's price exceeded the corrected government estimate for item 2 (\$74,126) by 26 percent; the high bidder's price exceeded that estimate by 41.6 percent; ABC's price was 23.1 percent lower than the estimate. That the estimate was in error is shown by all

bidders submitting bid prices significantly higher than the original item 2 government estimate (\$37,690).

The above facts, particularly the closeness of the two bidders' item 1 prices to the undisputed estimate, is evidence of the reasonableness of their prices and the invalidity of the protester's assertion that these bidders transferred costs from item 1 to item 2. This leads to the further conclusion that neither of the bids was mathematically or materially unbalanced.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States