

DECISION



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

6/10/76

FILE: B-185945

DATE: June 29, 1976

MATTER OF: York Division, Borg-Warner Corporation

98379

DIGEST:

1. As there is no showing in record that either basic or option quantity prices in low bid were nominal, enhanced, or did not represent cost of work plus profit, bid cannot be considered mathematically unbalanced. In any event, record indicates Government has known requirement for option quantity and is reasonably certain funds will be available to exercise option. Under such circumstances, mathematically unbalanced bid may be accepted because material unbalancing (reasonable doubt that award would not result in lowest ultimate cost) is not present.
2. Under GAO Bid Protest Procedures, protest against apparent improprieties in IFB must be filed prior to bid opening. Objections against IFB made in protest filed 2 days after bid opening are untimely and not for consideration.

York Division, Borg-Warner Corporation (York), has protested under invitation for bids (IFB) No. DSA-400-76-B-2168, issued by the Defense General Supply Center, Richmond, Virginia. The principal issue raised is whether the bid of Carrier Transicold Company, Division of Carrier Corporation (Carrier), was materially unbalanced and nonresponsive.

IFB item 0001 sought bids on 12 75-ton air-conditioning units. Item 0005 called for bids on an option quantity of four additional units of the same type. York and Carrier were the only bidders. Their prices were as follows:

F.o.b. Origin

	<u>Item 0001</u>	<u>Item 0005</u>
York	\$65,711.79	\$64,889.91
Carrier	65,568.00	61,485.00

F.o.b. Destination

	<u>Item 0001</u>	<u>Item 0005</u>
York	\$66,272.84	\$65,450.96
Carrier	65,871.00	61,788.00

IFB section D23 cautioned that "Any bid * * * which is materially unbalanced as to prices for basic and option quantities may be rejected as nonresponsive. An unbalanced bid * * * is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work."

Our Office distinguishes between mathematical and material unbalancing. Mathematical unbalancing relates to whether each bid item carries its share of the cost of the work plus profit or whether the bid is based on nominal prices for some work and enhanced prices for other work. Material unbalancing relates to the cost impact of a mathematically unbalanced bid. "Unless there is reasonable doubt that by making award to a party submitting a mathematically unbalanced bid, award will not result in the lowest ultimate cost to the Government, the bid should not be considered materially unbalanced." Mobilease Corporation, 54 Comp. Gen. 242, 245 (1974), 74-2 CPD 185.

The initial difficulty with York's protest is that there is no showing that Carrier's bid prices on items 0001 and 0005 are mathematically unbalanced. That is, there is nothing in the record to demonstrate that one or another of Carrier's prices does not represent the cost of the work plus profit, or that such prices are either "nominal" or "enhanced."

Even if it is assumed that Carrier's bid is mathematically unbalanced, there is no basis to conclude that material unbalancing would exist here. The record offers documentary support that the Government has a known requirement for the option quantity and is reasonably certain that funds will be available to exercise the option. Under these circumstances, a mathematically unbalanced bid may be accepted. Compare the facts in Mobilease Corporation, supra.

York also contends that Carrier's bid prices on IFB items 0003 and 0006 (basic and option quantities of a 30-ton air conditioner)


are unbalanced. The Defense Supply Agency (DSA) reports, however, that Carrier is not in line for an award on these items, and that the issue is therefore academic. We agree.

DSA wishes to award items 0001 and 0005 to Carrier and items 0003 and 0006 to York. York states that it does not want to accept an award if it is limited merely to items 0003 and 0006. In this regard, whether York can withdraw its bid is at the present time a matter for resolution between York and DSA. We see no basis to conclude on the record before us that York should be allowed to withdraw its bid.

A related contention raised by York concerns paragraph 10(c) of standard form 33A (1969 ed.), which allows the Government to make an award for any item or group of items in a particular bid. York believes that this is a confusing provision. York also contends that requiring bidders to quote prices on basic and option quantities, as well as on f.o.b. origin and f.o.b. destination terms, is confusing and ambiguous. York also believes that DSA failed to consider the economies to be achieved by standardizing on York's equipment. York cites in this regard ASPR § 2-201(a) Sec.D(i) (1975 ed.) (which provides that IFB's shall contain a statement of the exact basis on which bids will be evaluated, including any Government costs to be added or deducted) and ASPR § 2-407.1 (1975 ed.) (which provides that the bid most advantageous to the Government, price and other factors considered, shall be accepted). The IFB did not contain an evaluation factor covering the alleged cost advantages of standardizing on York equipment.

Our Office's Bid Protest Procedures, 4 C.F.R. § 20 (1976), require that protests against apparent improprieties in an IFB must be filed prior to bid opening. See 4 C.F.R. § 20.2(b)(1). The points mentioned above should have been apparent to York upon its receipt and examination of the IFB. See, in this regard, Honeywell Inc., B-184245, November 24, 1975, 75-2 CPD 346. York's protest was filed with our Office 2 days after bid opening. York's objections to the IFB are therefore untimely and not for consideration.

The protest is denied.


Deputy Comptroller General
of the United States