



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nomura Enterprise, Inc.

File: B-271215

Date: May 24, 1996

Al Weed, Nomura Enterprise, Inc., for the protester.

Kerry Miller, Esq., Government Printing Office for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. No basis exist to object to the agency's price reasonableness determination of the awardee's bid merely because the price was higher than the protester's intended bid.
 2. Bid is not materially unbalanced where there is no evidence that the awardee's bid will not result in the lowest ultimate cost to the government.
 3. Alleged oral advice from government official that varies the terms of an unambiguous solicitation is not binding on the agency and may not reasonably be relied upon by potential bidders.
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DECISION

Nomura Enterprise, Inc. protests the award of a contract to I-NET, Inc. under invitation for bids (IFB) No. A-899-S, issued by the Government Printing Office (GPO), for electronic conversion and Standard Generalized Markup Language (SGML) tagging of technical publications. Nomura contends that the agency made award to I-NET at an unreasonably high price, that I-NET's bid was mathematically and materially unbalanced, and that an IFB amendment and oral advice rendered the specifications ambiguous or defective, which caused Nomura to submit a bid containing a mistake.

We deny the protest.

The GPO issued the IFB to obtain a contractor to convert paper-based technical publications to electronic text and graphic files with embedded SGML tags for the Department of the Army, Aviation and Troop Command (ATCOM). The IFB contemplated the award of a fixed price requirements contract for a 6-month base period with 2 option years. Bidders were required to submit individual line item

pricing for eight specified tasks. For each task line item, unit prices per 100 pages were solicited and estimated units of production were designated, e.g., the estimated units of production for the first line item were 165 (i.e., 16,500 pages). The IFB informed bidders that the low bid would be determined by applying the unit prices offered to the designated units of production stated in the IFB and totaling these line item prices. Amendment No. 1 to the IFB revised the estimated units of production.

GPO received seven bids by the August 14 bid opening. The bids ranged from Nomura's low bid of \$173,346 to \$1,020,925. I-NET submitted the second low bid of \$373,163.82. Because Nomura's bid, particularly for the first line item, was very low when compared to the other bids, the agency requested Nomura to verify its bid. Nomura verified its bid on August 22 and the agency awarded Nomura the contract on October 1. On October 15, Nomura advised the agency of a substantial difference between its asserted intended bid price (\$277,545) and the government's calculation (\$173,346) of its price. Thus, Nomura requested the agency to either reform the contract or rescind it. GPO subsequently determined that Nomura's bid indeed reflected a mistake, but that Nomura had not established its intended bid by clear and convincing evidence. Therefore, on February 6, the agency rescinded the award to Nomura and made award to I-NET. Nomura filed this protest on February 23.¹

Nomura first challenges the award to I-NET on the basis that the price was unreasonably high because I-NET's bid was 35 percent higher than Nomura's alleged intended bid.

An agency's determination of price reasonableness is a matter of administrative discretion involving the exercise of business judgment, which our Office will not question unless that determination is clearly unreasonable or there is a showing of fraud or bad faith on the part of the contracting official. See Satin Am. Corp., B-261068, Aug. 16, 1995, 95-2 CPD ¶ 70; Porter-Cable Corp., B-227401, June 19, 1987, 87-1 CPD ¶ 618. An agency may select whatever price analysis techniques will ensure a fair and reasonable price, including relying on such factors as government estimates, past procurement history, current market conditions, or any other relevant factors including those which have been revealed by the competition itself. Satin Am. Corp., *supra*; Porter-Cable Corp., *supra*. Here, GPO reports that I-NET's bid price was determined to be reasonable because it was approximately \$120,000 lower than any of the remaining bids. Under these circumstances, the fact that I-NET offered a higher bid than Nomura's asserted intended bid is not a basis to object to the agency's price reasonableness determination. See Imperial

¹Nomura's protest does not challenge the agency's decision to rescind Nomura's contract because of the mistake in bid.

Maintenance, Inc., 71 Comp. Gen. 407 (1992), 92-1 CPD ¶ 464. The agency in its exercise of business judgment may properly consider a purported bid which is not established by clear and convincing evidence as an inadequate benchmark for comparison.

Nomura next alleges that I-NET's bid is mathematically and materially unbalanced because I-NET's bid for the first line item is more than three times higher than Nomura's intended bid, whereas I-NET's prices for the remaining line items are significantly less.

Before a bid can be rejected as unbalanced it must be shown to be both mathematically and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and overstated prices for other items. Where there is reasonable doubt that the 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. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126.

Here, Nomura has offered no evidence that I-NET's low bid, even if mathematically unbalanced, would not result in the government obtaining the lowest ultimate cost. The agency reports that I-NET's price for the first line item was lower than that of the remaining bidders. Moreover, Nomura's allegation does not demonstrate that I-NET's bid is materially unbalanced; specifically, Nomura does not challenge the accuracy of any of the IFB's estimated quantities or otherwise assert that the agency will deviate from its stated estimate quantities in ordering under the contract. Absent a showing that the estimated quantities may be inaccurate, we have no basis to question whether award to I-NET would result in the lowest ultimate cost to the government. Kdisc, Div. of Keysor Century Corp., B-240850, Aug. 24, 1990, 90-2 CPD ¶ 157.

Finally, Nomura argues that amendment No. 1, which revised the estimated quantities of the line items, introduced a latent ambiguity into the IFB, and that the agency allegedly misled Nomura regarding the interpretation of the amendment, which caused the mistake in Nomura's bid. Nomura explains that it interpreted the amendment as requiring the task that was encompassed by the first line item to be done on a "per 165 pages" basis, instead of on a "per 100 pages" basis, as GPO intended the IFB to read; that Nomura sought clarification of what was required by the amendment with GPO, which referred Nomura to ATCOM; that an ATCOM representative assertedly confirmed Nomura's interpretation, although advising that the interpretation should be confirmed with GPO; and that after unsuccessfully attempting to confirm ATCOM's interpretation by GPO, Nomura relied upon ATCOM's advice because of the short time left before bid opening and because GPO had previously stated that it would not extend bid opening in order to clarify the IFB requirements.

The agency denies that it or ATCOM gave any oral advice that was inconsistent with the IFB, as amended, which, as indicated, clearly required the first line item task to be done on a "per 100 pages" basis. In this regard, amendment No. 1 only revised the estimated units of production, not the units themselves. Thus, the IFB, as amended, was not ambiguous. Since the IFB provided that all information provided to a prospective bidder must be provided to all prospective bidders and that only written amendments issued by the GPO would be binding, such oral advice that varied the terms of the unambiguous IFB, even if given by ATCOM, was not binding and Nomura's reliance on it was unreasonable. See General Welding, Inc., B-236819, Dec. 8, 1989, 89-2 CPD ¶ 532; A.R.S. Constr. Co., B-228476, Jan. 27, 1988, 88-1 CPD ¶ 82.

The protest is denied

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