



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wright Tool Company

File: B-276416

Date: June 10, 1997

Sam Zalman Gdanski, Esq., for the protester.
Joshua A. Kranzberg, Esq., and Arthur M. Boley, Esq., Department of the Army, for
the agency.

Katherine I. Riback, Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that low priced proposal should be rejected as unbalanced is dismissed where proposal is low for both items being procured under a solicitation which provides for separate awards by item, in which circumstances there is no possibility of material unbalancing.

DECISION

Wright Tool Company protests the award of a contract to SPX Corporation under request for proposals (RFP) No. DAAE07-95-R-A607, issued by the Department of the Army. Wright argues that SPX's proposal should have been rejected as unbalanced.

We dismiss the protest.

The RFP, issued on February 15, 1996, contemplated the award of a fixed-price contract for fixed quantities of two different service tool kits. The solicitation, which provided that award would be made on the basis of the low priced, technically acceptable offer, required offerors to submit separate prices for each of the tool kits that they intended to offer, and contained a provision which allowed for separate awards for each tool kit. Contract line item (CLIN) 0001 was for 661 of the organizational support (OS) tool kits, consisting of 28 tools, and CLIN 0002 was for a 100-percent option for the OS tool kit. CLIN 0003 was for 75 of the General Support (GS) tool kits, consisting of 98 tools, and CLIN 0004 was a 100-percent option for the GS tool kit. The solicitation also notified offerors that the procurement was limited to kits consisting of tools specifically identified in the technical data package and that contractors proposing to submit alternate tools were required to submit technical data and/or samples for evaluation prior to the solicitation closing date.

The solicitation was amended several times to allow offerors additional opportunities to submit alternate tools, and to add previously approved tools to the lists of tools in the technical data package (TDP), and to extend the closing date to June 24. During this time, Wright submitted a run flat tool for approval and provided a list of 28 GSA-approved parts on which they intended to base their proposal for the OS tool kit. After testing, Wright's run flat tool was approved, and 24 of the 28 parts plus the run flat tool were added to the RFP by amendment No. 5.

Six contractors submitted offers on the OS tool kit and four submitted offers on both the OS and GS tool kits. SPX submitted offers for both tool kits and Wright submitted an offer for only the OS tool kit. The agency evaluated the initial proposals, held discussions, and requested best and final offers (BAFO) by December 5. The agency received four BAFOs. Wright's BAFO included an offer for both the OS tool kit and the GS tool kit. Wright's BAFO for the GS tool kit was conditioned on being able to purchase at a reasonable price several tools for which SPX was the only approved source. The agency found that Wright's conditional offer for the GS tool kit was unacceptable.¹ The BAFOs were evaluated as follows:

Offeror	OS Kit (CLIN 0001)	OS Kit 100% Option (CLIN 0002)	GS Kit (CLIN 0003)	GS Kit 100% Option (CLIN 0004)
SPX	\$874	\$854	\$8,400	\$8,235
Wright	\$997	\$1,047		
Offeror A	\$1,189	\$1,189		
Offeror B	\$1,890	\$1,890	\$9,100	\$9,100

The agency determined that SPX had submitted the lowest technically acceptable offer for both tool kits and made award to that company. This protest followed.

Wright contends that SPX's offer should have been rejected as "unbalanced." Wright alleges that SPX "significantly underbid" the OS tool kit, and is charging a "higher" amount for the GS tool kit, with the proceeds from the GS tool kit "subsidizing the absence of profits" in the low price for the OS tool kits. Wright bases its argument

¹Wright has not protested the agency's determination that Wright's offer to provide the GS tool kits was technically unacceptable.

that the OS tool kits offered by SPX were underpriced on the fact that more than 2 years ago the government awarded SPX a contract for the same OS tool kits in which the government paid approximately \$200 more for each OS tool kit.

Before a proposal can be rejected as unbalanced, it must be found both mathematically and materially unbalanced. A proposal is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. Where there is 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 at 2.

The concept of unbalancing is simply inapplicable here because the solicitation provided for separate awards for each tool kit. The possibility that a particular bid or proposal is unbalanced between line items arise where the solicitation provides for a combined award of separate line items, and it is alleged that certain line items are underpriced and others are inflated. Only in this scenario, and where there are estimated quantities of dubious reliability, does the possibility that the government may not actually obtain the low evaluated cost arise. Here, the awardee submitted the low price offer for fixed quantities of all of the line items, (which could have been awarded separately if different offerors were low for different line items) and it is clear that the award will result in low cost to the government in any circumstance.

Wright's challenge is more accurately characterized as an allegation that the agency accepted a below-cost offer. However, there is no prohibition against a procuring agency's accepting a low or below-cost offer on a fixed-priced contract. Akal Sec., Inc., B-261996, Nov. 16, 1995, 96-1 CPD ¶ 33 at 5. By awarding a fixed-price contract to such an offeror, the contracting agency has necessarily determined that the offeror is responsible, a determination which our Office will not review absent a

showing of possible bad faith or misapplication of definitive responsibility criteria, neither of which is present here. Intown Properties, Inc., B-256742, July 11, 1994, 94-2 CPD ¶ 18 at 4.² Accordingly, Wright has failed to state a valid basis for protest.

The protest is dismissed.

Comptroller General
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²To the extent that Wright argues that the extended closing dates that were laid out in the amendments did not provide enough time to permit the evaluation of additional alternate tools, this argument is untimely. Alleged improprieties which do not exist in the initial solicitation which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposal following the incorporation. 4 C.F.R. § 21.2(a)(1) (1997). In any event, we note that the solicitation provided ample time for offerors to submit alternate tools for evaluation. As stated above, the solicitation was issued on February 15, with an original closing date of March 18, which was extended by amendment June 24. The solicitation gave offerors a total of 130 days to submit alternate tools for evaluation.