

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

717 14th STREET, N.W., Suite 430
Washington, D.C. 20005

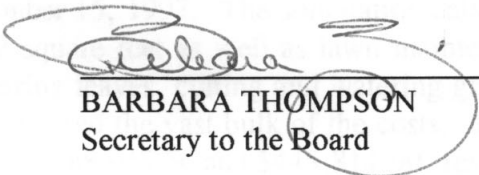
January 14, 1998

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SUBJECT: CAB No. P-521, C.P.F. CORPORATION

Attached is a copy of the Board's Opinion in the above-reference protest.


BARBARA THOMPSON
Secretary to the Board

cc: Professional Network Group, Inc.

base year price of \$547,225. C.P.F. was the incumbent contractor for janitorial services at five of the six facilities. The high bid had a base year price of \$1,225,342.45. (AR Ex. 3, at 1-2).

A contract specialist within OCP recommended that award not be made to Motir but rather to either the second low bidder (base year price of \$374,231) or the third low bidder (\$385,890). As part of the contract approval process (*see* AR Ex. 9), the contract specialist informally submitted her recommendation to the Contract Pricing Review Unit ("CPRU") located within the Office of the Chief Financial Officer ("CFO"). (AR Ex. 5). A representative of CPRU advised the contract specialist that "since the solicitation was issued as an IFB [OCP] would have to award to the low bidder," *i.e.*, Motir. The CPRU felt that the government estimates were overstated. In a memorandum, the CPRU asserts that the government estimate was "unrealistic and inadequate and should not be used to determine the price reasonableness because the estimate has no basis." (AR Ex. 6). The CPRU said the mandatory 92 janitorial hours per day seemed to be excessive, a 10 percent rate for material and supplies was unreasonable and not supported by historical price data, and the rates for labor, equipment, subcontracts, G&A, and profit were "without any justification." (*Id.*). There is nothing in the record showing that the contracting or using agency furnished the CPRU any historical data supporting the government estimates. No one seems to have noticed that the estimates understated the square footage by 11.5 percent. Although the contract specialist did not agree with CPRU's position, she was apparently advised that she had no choice but to make an award to Motir to obtain CPRU approval. The contract specialist prepared contract documents for an award to Motir and the CPRU approved the proposed award for cost/price sufficiency. The contract specialist thereafter executed findings stating that the \$237,099.97 price bid by Motir was reasonable and that Motir was a responsible bidder. (AR Ex. 7). On October 23, 1997, Mr. Richard Fite, the District's Chief Procurement Officer, executed a determination supporting award to Motir based on the contract specialist's findings. (*Id.*). The same day, the Chief Procurement Officer executed the contract award to Motir. (AR Ex. 8).

On November 7, 1997, C.P.F. filed its protest of the award on grounds that Motir did not submit a responsive bid, alleging that Motir will not be able to supply the required labor hours required by the solicitation or alternatively will not pay its employees according to the minimum wage rates required by law.

The District filed its Agency Report on November 24, 1997, arguing that C.P.F. lacks standing because it is not in line for award even if its protest were upheld, and, alternatively, the District's CFO would not approve an award to anyone other than Motir and thus the contracting officer had no choice but to comply.

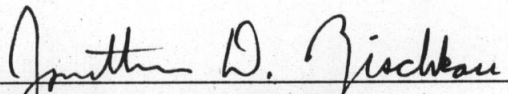
In its comments on the Agency Report, C.P.F. argues that based on minimum manhour requirements of the solicitation, and the labor costs required by federal law, principally the Service Contract Act, the contract cannot be performed for less than \$478,412.16. C.P.F. calculated this amount using direct labor costs, labor burden, 10 percent for materials, and two percent for subcontracts. The estimate does not include any cost for the lawn maintenance

manhours for janitorial services at the six facilities.¹ Although C.P.F.'s estimate may be a reasonable estimate, it contains amounts for materials and subcontracts that a bidder may be willing to absorb. At the minimum burdened labor rate of \$9.57 per janitorial hour, which excludes material and subcontracts, the total annual cost for janitorial services comes to \$427,091. There are other bidders whose base year prices exceed that amount who have lower bids than C.P.F. Moreover, C.P.F.'s argument that Service Star's bid is nonresponsive because a component of its bid relating to the 500 C Street facility is \$251,839, several thousand dollars below C.P.F.'s estimated minimum cost of \$257,409 for that facility, is without merit. Service Star's bid is not unbalanced, and Service Star's component price for the 500 C Street facility exceeds the minimum janitorial labor cost of \$229,795 (calculated using \$9.57 per janitorial hour). Even if a component of pricing were below estimated cost, that still would not necessarily dictate a conclusion that the bid is nonresponsive. Indeed, a bid price below the cost of performance is not objectionable for that reason alone. See *C.P.F. Corp.*, CAB No. P-413, Nov. 18, 1994, 42 D.C. Reg. 4902; *Advanced Modular Space, Inc.*, B-265860, Oct. 6, 1995, 95-2 CPD ¶ 168; *Oshkosh Truck Corp.*, B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115; *Crestmont Cleaning Service & Supply Co.*, B-254486, Dec. 22, 1993, 93-2 CPD ¶ 336. Generally, whether the contract can be performed at a price below the cost of performance is a matter of bidder responsibility. In the present case, the record does not demonstrate that Service Star's bid price is below the cost of performance.

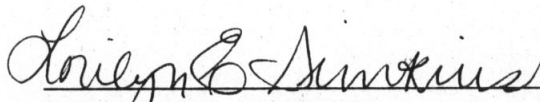
Because C.P.F. has not shown that it would be next in line for award even if it were successful in its challenge of the award to Motir, its protest must be dismissed.

The protest is dismissed.

DATE: January 12, 1998


JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:


LORILYN E. SIMKINS
Chief Administrative Judge

¹ We agree with C.P.F. that the contracting agency and the CFO's office did not read the solicitation differently as far as janitorial service minimum manhour requirements.