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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Triple H Services

File: B-298248; B-298248.2

Date: August 1, 2006

Pamela Hoyle for the protester.

William A. Lubick, Esq., U.S. Army Corps of Engineers, for the agency.

Debra Ransom, B.R. Mowing, Inc., for the intervenor.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where record fails to support protester's contentions that awardee's bid is materially unbalanced or that agency's affirmative determination of responsibility for the firm was improper.

DECISION

Triple H Services protests the award of a contract to B.R. Mowing, Inc. under invitation for bids (IFB) No. W911WN-06-B-0002, issued by the Army Corps of Engineers for buildings and grounds maintenance services at Berlin Lake, Berlin Center, Ohio. The protester contends that the awardee's bid is materially unbalanced and challenges the agency's affirmative determination of the awardee's responsibility.

We deny the protest.

The IFB, issued on February 19, 2006, contemplated the award of a fixed-price requirements contract for building and grounds maintenance services, including grass mowing and cleaning services, for a base period plus 4 option years; the IFB required that employees be compensated at prevailing wage rates during the term of the contract. IFB at 18, 39, 41. Five bids were received by the agency. B.R. Mowing, the incumbent contractor for the services, submitted the low bid, at \$867,243.55; Triple H submitted the next low bid, at \$1,111,600. Noting that the incumbent's bid was also lower than the agency estimate and the firm's prior contract price for the work, the agency asked B.R. Mowing to confirm its price.

B.R. Mowing reported that its bid was accurate and further explained that it was able to offer a lower price by performing much of the work itself, with only limited subcontracting; the firm also noted its successful performance of the same work for the last 5 years to demonstrate its full understanding of the requirements and confirmed that it was prepared to meet those requirements at the price it bid for the work. In response, the agency asked for additional information regarding, for instance, the firm's anticipated direct labor and indirect costs. B.R. Mowing submitted bid workpapers and an explanatory narrative identifying some wage rates it stated were used in calculating the firm's bid; in its narrative, the firm further explained that, as the incumbent contractor, it had full knowledge of the work, already owned the required equipment, and anticipated limiting overall labor costs by doing much of the work itself with family members and a current employee.

The agency reports that it found B.R. Mowing's bid acceptable, since the firm twice confirmed the accuracy of its pricing, and also confirmed its agreement to the IFB requirement to compensate employees at the prevailing wage rates. The agency also considered that the firm's successful performance of the same work requirements for the last 5 years showed a full understanding of the requirements, and that its favorable preaward survey, confirming adequate financial resources and performance capability, supported an affirmative determination of B.R. Mowing's responsibility. An award was made to the firm; this protest followed.

Triple H initially contends that the awardee's bid is materially unbalanced for significantly understating several line item prices, including grass mowing services and certain restroom cleanings. The agency responds that Triple H's contention is actually a challenge to an alleged below-cost bid and, as such, provides no basis to question the award. We agree.

Unbalanced pricing exists where the price of one or more contract line items is significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). See Federal Acquisition Regulation § 15.404-1(g)(1); Ken Leahy Constr., Inc., B-290186, June 10, 2002, 2002 CPD ¶ 93 at 2. The protester has made no such showing here; rather, Triple H contends that award to B.R. Mowing is improper because the awardee's price is too low. With regard to this contention, it is well settled that a bidder may, in an exercise of its own business judgment, properly decide to submit a price that is extremely low, including below-cost prices. See Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. Moreover, there is no prohibition against a procuring agency's acceptance of a below-cost bid for a fixed-price contract; fixed-price contracts generally are not subject to adjustment during contract performance, so the bidder, not the agency, will bear any resulting financial risk, including a low profit margin. See Brewbaker White Sands JV, B-295582.4, Oct. 5, 2005, 2005 CPD ¶ 176 at 6, n. 3. Since the acceptance of a below-cost bid is legally unobjectionable, we have no basis to consider this aspect of Triple H's protest further.

Triple H next challenges the agency's affirmative determination of B.R. Mowing's responsibility, alleging that the agency failed to consider available information that Triple H believes should have led to a negative responsibility determination. Specifically, the protester contends that the agency should have held against B.R. Mowing the fact that, in its response to the agency's post-bid opening inquiry, the firm asserted that it would pay certain wage rates which are, according to Triple H, lower than the wage rates that will be required during contract performance. The protester also alleges that the agency failed to consider that B.R. Mowing was recently required to pay back wages to employees under its incumbent contract.

Our Office will not review challenges to an agency's affirmative determination of responsibility except for limited circumstances, including where evidence raises serious concerns that, in reaching a particular determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2006). The protest here does not meet the standard for invoking our review of the agency's responsibility determination.

First, while the protester alleges that the agency failed to consider the awardee's reference to certain allegedly noncompliant wage rates in its post-bid opening statements to the agency, a bidder may remain eligible for award even if lower wage rates than those required by a prevailing wage rate determination are offered by the firm where the firm accepts (and is therefore obliged to meet) a requirement to compensate employees at prevailing rates, and the firm is otherwise determined to be responsible (in this case, on the basis of a positive preaward survey). See Stanley Aviation, Inc., B-256650, July 14, 1994, 94-2 CPD ¶ 23 at 4-5. Second, while the protester asserts that the agency ignored the fact that the awardee recently had to pay back wages under its current contract, the record is clear that the agency reasonably considered the information. As the agency reports, B.R. Mowing promptly paid the back wages it was found to owe under its prior contract, and the matter was resolved to the government's satisfaction. The record thus shows that the agency gave reasonable consideration to the information the protester contends it failed to review; accordingly, the protester has failed to present a sufficient basis to question the propriety of the agency's affirmative determination of responsibility and award. See Government Contracts Consultants, B-294335, Sept. 22, 2004, 2004 CPD ¶ 202 at 2.

The protest is denied.

Gary L. Kepplinger
General Counsel