

FREDERIC G. ANTOUN, JR.

ATTORNEY AT LAW

247 LINCOLN WAY EAST
CHAMBERSBURG PA 17201-2295

717-261-0998

Fax: 717-263-7328

website: <http://www.printlaw.com>

email: antoun@printlaw.com

To: Clients; GPO Printers
From: Fred Antoun
Re: "Materially Unbalanced" Program Pricing
Date: September 14, 2000

There has long been a rule in federal government contracting allowing agencies to reject low bids if the contracting officer determines that the bid prices are "materially unbalanced". GPO has used this rule on several occasions to reject the low bid.

The last revisions to GPO's "Contract Terms" specifically added a definition of materially unbalanced bids, and incorporated into each contract the GPO's right to reject such bids. *GPO Contract Terms, Solicitation Provision No. 13*. This is a change that program bidders should be aware of...and can use to displace a lower bidder! All bidders are now on notice that GPO can review the reasonableness of individual line item prices – as opposed to just computing the low bidder by multiplying those line item prices by the basis of award numbers. However, GPO has not been regularly doing so without a complaint from another bidder.

What is a materially unbalanced bid? Basically, it is a bid in which line item prices are structured so that it is possible that the bidder who appears to be low will not end up having the lowest overall cost to the government, due to high prices on particular line items. When reviewing a bid for "balance" a red flag goes up when the government employee sees a line item price that is either significantly less or significantly more than it should be for the work involved. A very low line item price may indicate that the printer is going to make up for the cost of that work somewhere else.

In a balanced bid, the government should get a fair price, even if the determination of award numbers are not correct and even if the "requirements" change during the year.

For years, GPO program vendors have been playing a pricing game under which they overprice line items that might be underestimated in the determination of award figures. The high line item cost would not dramatically increase the bid, because the basis of award numbers were low. Here is an example: Assume there is a contract for 1-color technical publications under which film has been provided. The basis of award lists only 100 units of 8 ½ x 11" film. If a printer bids \$10 for each film unit, his price would increase by \$1,000. However, if during the contract year, the agency revised its technical manuals and furnished camera copy, each order might have hundreds of pages of film to be made. At \$10 per page for film, it's easy to see how the contract price could soar.

Another classic situation that could result in an unbalanced bid is where the bidder prices a number of line items at “0” and lumps the costs into one line item. ”. GPO program vendors could think of many other examples where the bid may be “materially unbalanced.”

The low bid in these examples could be determined to be materially unbalanced and rejected, because of pricing that is “significantly overstated in relation to the cost” or would make it impossible to determine if the pricing was “fair and reasonable.”

The good news for most GPO bidders is that a mere price differential does not make a line item price out of balance. The pricing differential between the bidder and other bidders or the bidder and market price should have to be substantial. It would also have to be a price which, when compared against the contract parameters may not result in the lowest overall cost to the government.

Why has the GPO announced a new position on materially unbalanced bids? The answer is simple: the GPO and a number of its agency customers have been “stung” by materially unbalanced bids, when some of the program requirements changed, or the jobs changed slightly during the year, causing individual print order pricing to skyrocket. In these days of declining print volume, the GPO simply cannot afford to have its agency customers overcharged because of an oversight in the determination of award or an unbalanced low bid.

Even more interesting than the GPO’s apparent willingness to more carefully evaluate unbalanced bids is the fact that the number two bidder can evaluate the low bid and if it is materially unbalanced, successfully challenge it by a protest, and move into the “lowest bid” position.

Printers who end up in the number two position on a program bid should carefully evaluate the low bidder’s pricing and be prepared to take action to challenge the bid if it is materially unbalanced.

If you have questions about a specific bid, you may call me at (717) 261-0998.

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