



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Beldon Roofing Company

File: B-283970

Date: January 28, 2000

James D. Rosenblatt, Esq., for the protester.
J. Hatcher Graham, Esq., for R.L. Campbell Roofing Company, an intervenor.
Marilyn W. Johnson, Esq., and Richard G. Welsh, Esq., Department of the Navy, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency conclusion that award to bidder that proposed relatively high prices for removal of old roofs and relatively low prices for installation of new roofing systems did not represent a risk to the government is unobjectionable where the reasonableness of the estimated quantities is not in question, the agency expects to order removal and installation together, and the awardee's evaluated price is significantly lower than the protester's.

DECISION

~~Beldon Roofing Company protests the award of a contract to R.L. Campbell Roofing Company (Campbell) under invitation for bids (IFB) No. N62467-99-B-3149, issued by the Department of the Navy for the repair and replacement of roofs at the Pensacola Naval Region, Pensacola, Florida and Naval facilities in Mobile, Alabama. Beldon contends that Campbell's bid is unbalanced and cannot properly form the basis for contract award.~~

We deny the protest.

The IFB, issued on July 9, 1999, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contract for a base period with four 1-year options. IFB § 01200. Contract line item number (CLIN) 0004 and related sub-CLINs of the IFB required contractors to remove modified bitumen roofing and to install new modified bitumen roofing. CLIN 0007 and related sub-CLINs required the removal of existing aluminum standing seam roofing and the installation of new

aluminum standing seam roofing. Award was to be made to the responsive, responsible bidder offering the lowest total price for all CLINs. IFB § 00200, ¶ 1.19. Five bids were received by the August 16, 1999 bid opening date. Campbell submitted the apparent low bid of \$14,972,210. Agency Report, Tab 3. Beldon submitted the second low bid of \$18,591,822. Id.

By letter dated August 17, the agency informed Campbell that its bid was significantly below the other bids received, inquired whether Campbell had considered inflation in its price for the option years, and requested that Campbell verify its bid price. Agency Report, Tab 6. Campbell verified its bid by letter dated August 18 and advised the agency that it had considered inflation and had learned from past experience that being well established during the base year, with a well established, experienced crew, would result in cost savings during the life of the contract sufficient to cover inflation. Agency Report, Tab 7.

By letter dated September 8, the agency advised Campbell that its bid appeared to be unbalanced and specifically noted that Campbell's CLIN prices with respect to roof installation appeared underpriced, while its CLIN prices for roof removal, flashing and downspouts appeared to be overpriced. Agency Report, Tab 8. The agency also noted that Campbell's bond prices appeared to be excessive. In its response, Campbell stated that it had reviewed its prices and no price was below cost and, while conceding that some of its item prices may seem high, pointed out that, assuming the validity of the government estimates, the bid was not materially unbalanced. Agency Report, Tab 9. Campbell did, however, state that there was a decimal placement error in its bond cost and that the price of \$220 per thousand should have been \$22 per thousand.

After reviewing Campbell's verification, the contract specialist noted that the current contract, unlike the prior contract, requires the entire roofing systems to be ordered, with the exception of sheet metal flashing and insulation, and does not call for individual piece part sub-line items in addition to the installation. Agency Report, Tab 10. To ensure that Campbell understood the scope of the CLIN requirement, the agency sent Campbell a third bid verification letter noting the CLIN requirements and requesting that it review the prices associated with the removal of old roofs and the installation of new roofing systems, and provide a revised bid sheet which accurately reflected bond costs. Agency Report, Tab 11. Campbell again verified its bid price except for the bonding costs which it stated should have been \$22 per thousand.

The agency accepted the correction to Campbell's bonding costs as well as another correction involving prices for option years 1 thru 4 of the Mobile facility line items. Award was made to Campbell on October 13 in the corrected, lowered amount of \$14,842,497.50. Agency Report, Tab 14. Beldon challenges the agency's award to Campbell on the grounds that Campbell's bid is unbalanced primarily because it has

nominal prices for the installation of new roofs and enhanced prices for the removal of old roofs.¹

Federal Acquisition Regulation (FAR) § 15.404-1(g) provides that unbalanced pricing exists where the price of one or more contract line items is significantly over- or understated as indicated by the application of cost or price analysis techniques. FAR § 15.404-1(g)(2) requires that offers with separately priced line items or sub-line items be analyzed, using cost or price analysis techniques, to determine if the prices are unbalanced and, if an offer is found to be unbalanced, the contracting officer shall consider the risk that award of the contract will result in paying unreasonably high prices for contract performance. An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the government. FAR §15.404-1(g)(3). Here, the agency concluded that Campbell's pricing strategy did not pose an unacceptable risk because removal and installation would be ordered together as a package.

The protester generally disagrees with the agency's conclusion that Campbell's unbalanced pricing does not represent a risk to the government. Beldon further maintains that, since the removal has to be performed prior to installation, award to Campbell would result in an improper advance payment.

Prior FAR provisions called for the rejection of a mathematically unbalanced offer if it was so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment, even if the offer appeared to represent the lowest cost to the government. FAR §15.814(b)(2) (June 1997); Jasper Painting Serv., Inc., B-251092, Mar. 4, 1993, 93-1 CPD ¶ 204 at 4. In this regard, we have found prices to be impermissibly front-loaded only in limited situations where the front-loaded item prices were many multiples higher than the value of the work to be performed or the remaining contract prices. See ACC Constr. Co., Inc., B-250688, Feb. 16, 1993, 93-1 CPD ¶ 142 (line item price of \$4.7 million versus government estimate of \$1.8 million); Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 CPD ¶ 227 (first article unit prices were \$15,000 and the production unit prices were \$408.90); Edgewater Mach. & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630 (first article prices were \$125,000 and the production unit prices were \$301). In each of these cases, the grossly overpriced items would have resulted in substantial funds—which significantly exceeded the value received by the government—being paid to the contractor early in contract performance. Here, Campbell's bid cannot result in such

¹ Beldon, in its initial protest, also argued that it was improper for the agency to allow Campbell to correct certain pricing errors in its bid. In its report, the Navy maintained that it properly allowed Campbell to correct based on clear and convincing evidence of the mistakes and the intended prices. The protester does not mention this contention in its comments and we see no basis to question the agency's analysis.

an advance payment. The solicitation specifically requires vendors to sequence the work to minimize building exposure between demolition and installation of new roof, IFB § 02220, ¶ 3.1.2. It further requires vendors to remove only as much roofing as can be recovered by the end of the workday, IFB § 02220, ¶ 3.1.2.1. Moreover, vendors are to be paid through the submission of monthly invoices detailing the work actually performed. IFB § 01200, ¶ 2.6.1.b. Thus, there is simply no way that Campbell can receive the kinds of excessive payments at a sufficiently early date to fall within the ambit of what our Office has viewed as impermissible advance payments arising from unbalancing. Moreover, under the current FAR provision involving unbalanced bidding, neither the term "advance payment" nor the concept is any longer used in discussing unacceptable unbalanced pricing. We therefore question whether this kind of front loaded pricing can be rejected under the extant unbalancing criteria, absent an associated risk assessment, even though we recognize that the prohibition on advance payments is still contained in 31 U.S.C. § 3324 (1994).

Beldon also contends that the agency's evaluation of Campbell's unbalanced bid failed to take into consideration that the combination of the tear off and installation of the roofing membrane prices was clearly nominal compared to the inflated price charged for the other items that complete a roofing system. In fact, the agency specifically recognized this apparent unbalancing, and it precipitated the correspondence with the protester, outlined above. However, there did not appear to be any basis to question the estimated quantities for each IFB CLIN, and the protester specifically declines to question the accuracy or reasonableness of these estimates. Protester's Comments at 2, 5. While Beldon does not challenge the accuracy of the estimates, it argues that actual quantities ordered depend on unpredictable variables and that it is only appropriate to evaluate the bids by comparing prior delivery orders. Since, as explained above, the items here are not being ordered in the same manner as under the prior contract in that the complete tasks of removal and installation are to be performed in close proximity and will be included in one delivery order, we do not agree that a comparison with prior delivery orders would be more accurate or appropriate.

More important, the IFB did not call for the price evaluation to be conducted in that manner; rather, it called for the use of the specified estimates, as was done by the agency, and the protester did not protest the IFB's terms--and even now has not provided any basis to question the accuracy of those estimates. The evaluation of bid prices based on the estimated quantities results in the awardee's bid being almost \$4,000,000 lower than the protester's. Under these circumstances, we see no basis to question the reasonableness of the agency's conclusion that, whatever unbalancing

may exist in Campbell's bid, it does not pose an unacceptable risk. Kellie W. Tipton Constr. Co., B-281331.3, Mar. 22, 1999, 99-1 CPD ¶ 73 at 6.²

The protest is denied.

Comptroller General
of the United States

² The protester also argues that the agency ignored the fact that Campbell's prices on the work to be performed at the Mobile facility is a further indication that Campbell's bid is unbalanced because there are enormous discrepancies between pricing of CLINs for work at the Mobile location compared to those at Pensacola. Again, the protester does not contend that the estimates for the work are inaccurate, and we fail to see how this by itself suggests that Campbell's pricing strategy reflects impermissible unbalancing, particularly since business judgment and differing site conditions may contribute to different pricing for different locations, without creating so great a risk to the government that it would be improper to accept the bid.