



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Ryan Company

File: B-238932

Date: June 13, 1990

Leo S. McNamara, Esq., McNamara and DeSimone, for the protester.
Lester Edelman, Esq., Office of the Chief of Engineers, Department of the Army, for the agency.
David Hasfurther, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. An ambiguity as to the low bidder's intended price does not render the bid nonresponsive or otherwise unacceptable when the bid would be low by a significant margin under the least favorable interpretation. The intended price may be verified after bid opening.
2. A bid is not materially unbalanced where it is clear that an award based on the bid will result in the lowest cost to the government and where no advance payments will result from the bidder's pricing.

DECISION

The Ryan Company protests the proposed award to Acme Electric, Inc., under the Army Corps of Engineers, New England Division, invitation for bids (IFB) No. DACA33-90-B-0015, issued for work on the transmission and distribution lines of an electric substation at Fort Devens, Massachusetts. Ryan contends that Acme's pricing of IFB line item 6 made Acme's bid nonresponsive. In the alternate, Ryan contends that the bid must be rejected because it is materially unbalanced.

We deny the protest.

The IFB requested prices for each of seven base items, a total price for the base bid and for prices on an additive item. Line item 6 was set out on the original bid schedule as follows:

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<u>"Line Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
6	Upgrade Existing Electrical Distribution System to 13.8 kV				
(a)	Distribution Transformer Removal & Disposal	1	Job	LS	\$ _____
(b)	All Other Distribution Conversion Work	1	Job	LS	\$ _____"

Page three of the bid schedule indicated that various specifications and drawings were applicable to subitems 6(a) and 6(b). No specifications or drawings were included for line item 6 except those specifically listed for subitems (a) and (b).

Subsequently, amendment No. 0002 to the solicitation was issued which, among other things, included a new bid schedule which changed the pricing format for item 6 by adding a line for a price next to the designation for item 6 as follows:

"6	Upgrade Existing Electrical Distribution System to 13.8 kV	1	Job	LS	\$ _____"
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Nothing was changed as regards the pricing required for subitems 6(a) and 6(b) or the referenced specifications and drawings. The agency states that addition of the pricing line for item 6 was inadvertent.

Six bids were opened on March 1, 1990. The two lowest bids and the government estimate were as follows:

<u>"Bidder</u>	<u>Total Base Bid</u>	<u>Additive Item</u>	<u>Total</u>
Acme	\$2,709,100	\$184,300	\$2,893,400
Ryan	\$2,948,205	\$226,205	\$3,174,410
Gov't Estimate	\$2,789,600	\$222,400	\$3,012,000"

While examining the bids, the contracting officer noted that some confusion apparently had resulted from the amendment No. 0002 pricing format change for item 6 inasmuch as several of the bidders priced the item and its subitems differently. The bids submitted by Acme and Ryan as well as the government estimate for item 6 are set forth below:

<u>"Bidder</u>	<u>Item 6</u>	<u>Subitem 6(a)</u>	<u>Subitem 6(b)</u>
Acme	\$597,300	\$ 85,400	\$ 20,000
Ryan	696,900	47,150	649,750
Gov't Estimate	0	78,500	901,600"

The record shows that three bidders, including Acme, submitted three separate prices on each of the lines, all three of which when added together formed the total bid price for the item. Two bidders submitted prices for the subitems with no--or a token \$1--price for item 6. One bidder, Ryan, submitted prices for the subitems and totaled them in the space next to the item 6 designation. Its total bid for all of the seven base items reflects the firm's intent that all of the three prices under item 6 should be added together to arrive at its total price for item 6. After opening, the agency requested that Acme verify its base bid amount as well as its bid for item 6. According to the agency Acme did so.

Ryan first argues that Acme's bid should be rejected as nonresponsive because that firm bid in a manner which the protester contends is inconsistent with the bid scheme contemplated by the solicitation. The protester states that bids should have been submitted so that the prices for subitems 6(a) and 6(b) were totaled in the space next to the item 6 designation and that the bid scheme adopted by Acme makes it impossible to determine its actual bid. It is, according to the protester, unfair to the other bidders to permit Acme to confirm its bid price after opening since that firm could then choose whichever alternative is to its advantage. For example, the protester says the awardee could argue that it intended to have all three prices, \$597,300; \$85,400; \$20,000 added together, or it could maintain that it actually intended \$597,300 as its total bid for all the work under item 6.

In general, to be responsive, a bid must be an unequivocal offer to perform without exception the exact thing called for in the solicitation so that upon acceptance the contractor will be bound to perform in accordance with all of the solicitation's material terms and conditions. Caswell Int'l Corp., B-233679, Mar. 21, 1989, 89-1 CPD ¶ 291. Here, there is nothing on the face of Acme's bid

which would indicate that the firm did not intend to be bound by the terms of the solicitation. The protester's argument that the bid should be rejected is centered solely on the premise that Acme's price under item 6 is ambiguous. It is our view, however, that an ambiguity as to price does not by itself render a bid nonresponsive or otherwise unacceptable. NJS Dev. Corp., B-230871, July 18, 1988, 88-2 CPD ¶ 62. A bid which is ambiguous as to price need not be rejected if it is low under all possible interpretations. Id. In this case since Acme's overall bid is low even under the interpretation of its bid on item 6 which results in the highest price^{1/} it was a matter that could be and was properly verified after bid opening. Energy Maintenance Corp. v. Turbine Engine Serv. Corp., 64 Comp. Gen. 425 (1985), 85-1 CPD ¶ 341. We therefore think that the agency acted properly in not rejecting Acme's bid as nonresponsive because of its pricing scheme under item 6.

In the alternative, Ryan argues that Acme's bid should be rejected as materially unbalanced under item 6. As indicated above that item for upgrading the existing electrical distribution system is broken down in the schedule into two subitems; subitem (a) for the removal and disposal of the current distribution transformer and subitem (b) for all the other related work. The protester points out that since Acme chose to include most of its price, \$597,300, in the space next to the item 6 designation it is not possible to tell whether during performance that sum will be assigned for payment to subitem 6(a) work, which is to be performed first and for which payment will be made first, or to the subitem 6(b) work to be performed later. The protester concludes that if a significant portion is assigned to the \$85,400 subitem (a) bid then that amount will be in excess of the value of the actual work represented by subitem 6(a) and will thus result in an improper advance payment.

A bid which is materially unbalanced must be rejected as nonresponsive. F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573. A bid is materially unbalanced if it is based on nominal prices for some items and enhanced prices for other items and there is a reasonable doubt that an award based on the bid will result in the lowest cost to the

^{1/} In fact it appears from the record that both Acme and the agency have at all times interpreted that firm's bid on item 6 by adding all three prices and using the sum as the price for item 6. That interpretation results in the highest price.

government. Atlas Disposal Sys., Inc., B-229714, Feb. 23, 1988, 88-1 CPD ¶ 186. Here, there is nothing to show that an award to Acme will not result in the lowest cost to the government.

We have also recognized, however, that in certain circumstances a bid which is grossly unbalanced should be rejected if payments made under a contract awarded pursuant to such a bid would amount to improper advance payments. See Canaveral Maritime, Inc., B-231857.4; B-231857.5, May 22, 1989, 89-1 CPD ¶ 484. An improper advance payment would occur when a payment under a contract to provide services or deliver an article is more than the value of the services provided or the article delivered. F&E Erection Co., B-234927, supra. Such advance payments would be detrimental to the competitive bidding system, specifically since they would allow the bidder to enjoy an advantage not enjoyed by its competitors for the award--the use of interest-free money. Nebraska Aluminum Castings, Inc.--Second Request for Recon., B-222476.3, Nov. 4, 1986, 86-2 CPD ¶ 515.

We would agree with the protester that had Acme included the \$597,300 figure in its bid for subitem 6(a) that its bid would indeed be unbalanced or grossly front-loaded and should be rejected. That, however is not the case here. Acme's actual bid of \$85,400 for the initial work represented by subitem 6(a) is consistent with the government estimate and no party argues that it is in excess of the value of the work to be performed pursuant to that subitem. The protester's position is based on speculation that the amount inserted by Acme in the space located next to the item 6 designation may be assigned during performance to the payment made for work performed under subitem 6(a).

We do not agree with the protester that such an allocation is a reasonable possibility. We recognize that some uncertainty does arise where as here an agency inadvertently places a space for a bid price next to a line item which does not itself represent any specific work to be performed. Nevertheless, since subitem 6(b) represents all the work to be performed to upgrade the electrical distribution system other than the specific tasks designated by subitem 6(a) it is not in our view realistic for the protester to assume that the \$597,300 would be assigned by the agency for payment under 6(a) rather than 6(b) which is clearly the only reasonable place for the \$597,300 to be allocated. The agency in fact reports that it will not assign that sum to subitem 6(a). Therefore, since the bid submitted by Acme is not on its face front-loaded or

materially unbalanced we do not believe that it should be rejected because of the protester's speculation that a significant part of its bid price could be misallocated so that an improper advance payment would result.

The protest is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel