



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: K.C. Brandon Construction

File: B-245934

Date: February 3, 1992

Donald D. Harmata, Esq., K.C. Brandon Construction, for the protester.

Gregory H. Petkoff, Esq., and John R. McCord, Esq.,
Department of the Air Force, for the agency.

James Cunningham, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Bid of \$200,000 for line item which solicitation provided was subject to \$200,000 statutory cost limit was properly determined responsive where bidder certified that bid contained all applicable costs, overhead, and profit for this line item, and the agency determined that no government-imposed contingency or overhead costs were applicable to the item as of the time of bid opening.

DECISION

K.C. Brandon Construction (Brandon) protests the proposed award of a contract to West Coast Construction Company by the Department of the Air Force, Travis Air Force Base, California, under invitation for bids (IFB) No. F04626-91-B-0112, issued on August 12, 1991, to renovate building 16 at the base. Brandon contends that the proposed award is improper because West Coast's low bid for the work allegedly exceeds the \$200,000 statutory cost limit for item No. 0001 (minor construction) of the IFB.

We deny the protest.

The IFB listed four line items (No. 0001; No. 0002--repair; No. 0003--maintenance; No. 0004--asbestos removal) and provided spaces for bidders to insert item prices. The IFB stated that: "Item 0001 has a Statutory Cost Limitation of \$200,000, SEE COST LIMITATION CLAUSE on the next page." The referenced cost limitation clause provided that a bid which did not contain a separate bid price for item No. 0001 might be considered nonresponsive, and further provided that by signing its bid, the bidder certified that each price bid on

items subject to a cost limitation included "an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit."

Bids were opened on September 16, 1991. West Coast submitted the lowest overall bid of \$1,072,000, including a bid of \$200,000 for item No. 0001. West Coast's bid did not take any exceptions to the IFB. Brandon was the next lowest bidder with an overall bid of \$1,100,057, including a bid of \$119,520 for item No. 0001. On September 19, Brandon protested to the Air Force that West Coast's bid exceeded the statutory cost limit for item No. 0001. After the Air Force denied Brandon's protest, Brandon protested to our Office.

Federal Acquisition Regulation (FAR) § 36.205(a) provides that contracts shall not be awarded at a cost "in excess of statutory cost limits" (unless these limitations are waived for the particular contract) or "which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization." In the absence of a waiver, a bid exceeding the applicable cost limit must generally be rejected. Ward Constr. Co., B-240064, July 30, 1990, 90-2 CPD ¶ 87.


Brandon argues that West Coast's bid exceeds the \$200,000 cost limit if "Government-imposed contingencies and overhead" are added to Brandon's bid. The Air Force states that there were no "Government-imposed contingencies and overhead" finally determined to be applicable to this particular IFB item. The Air Force's May 10, 1991, estimate (\$164,542) for item No. 0001 included a "contingencies" factor of \$7,682. However, the record does not show that this represents government-imposed contingencies rather than contingencies which a contractor would take into consideration in preparing its bid. The Air Force concluded that there were no "Government-imposed contingencies and overhead" for this item, and the solicitation does not call for the imposition of any such contingencies; therefore, the Air Force properly concluded that West Coast's bid of \$200,000 for item No. 0001, which contained the required cost limit certificate, was within the statutory cost limit of \$200,000 for that item.

This case is distinguishable from Labco Constr., Inc., B-230798, July 18, 1988, 88-2 CPD ¶ 60, cited by Brandon, where the contracting agency determined that there were "Government-imposed contingency and overhead" costs applicable to certain work. As a result, the agency adjusted all bids for the amount of these costs by reducing the statutory cost limit to an amount low enough so that even with the addition of these costs, the actual statutory cost limit would not be exceeded by bidders, and by

specifying this reduced limit in the IFB. Here, by contrast, the IFB did not contain any reference to a reduced cost limitation in order to take such costs into account. Thus, there is no basis to apply the reduced cost limitation which Brandon asserts should be applicable.

Finally, Brandon alleges that the Air Force improperly encouraged West Coast, after bid opening, to reallocate its prices for items No. 0001 and 0002 by alleging a mistake, which decreases item No. 0001 by \$43,000 and increases item No. 0002 by \$43,000. Since West Coast's original bid conformed to the statutory cost limit, we need not consider this allegation, since as of the bid opening, West Coast's bid was properly determined responsive irrespective of the alleged allocation mistake, which has no effect on Brandon's total bid.

The protest is denied.


for James F. Hinchman
General Counsel