Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alice Roofing & Sheet Metal Works, Inc.

File: B-275477

Date: February 24, 1997

Ronald J. Shaw, Esq., for the protester.
Joan K. Fiorino, Esq., and Donald E. Barnhill, Esq., East & Barnhill, for Port Enterprises, Inc., an intervenor.
Maj. Michael J. O'Farrell, Jr., and Col. Nicholas P. Retson, Department of the Army, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a solicitation for a requirements contract, the agency reasonably rejected the apparent low bid as materially unbalanced where the bid included nominal prices for numerous line items and enhanced prices for other line items, and where uncertainty concerning the reliability of the solicitation's estimated quantities gave rise to a reasonable doubt that the unbalanced bid would actually represent the lowest price to the government.

DECISION

Alice Roofing & Sheet Metal Works, Inc. protests as improper the rejection of its bid as mathematically and materially unbalanced under invitation for bids (IFB) No. DADA18-96-D-0021, issued by the Department of the Army for roofing repair and replacement.

We deny the protest.

The Army issued this solicitation on August 8, 1996, to furnish all plant, labor, equipment, and materials necessary to repair and replace roofing on miscellanous-type buildings at Fort Sam Houston, Camp Bullis, and Army Reserve Centers in San Antonio, Texas. The bidder whose bid was most advantageous to the government, considering only price, would be awarded a fixed-price requirements contract for 1 base year and 1 option year. Section B of the solicitation listed 105 contract line items (CLIN) for each contract period, along with the agency's estimated quantities for each item. Bidders were to supply a unit and extended price for each CLIN and a total price for each contract period. Each bidder's overall price would be determined by multiplying the bid prices by the estimated quantities for each of the 210 CLINs in the solicitation.

The solicitation's CLINs were broken down by the types of tasks associated with repairing and replacing several different types of roofing systems. Thus, for each contract period, the solicitation contained 16 CLINs for roof decking, sheathing, and framing systems; 9 CLINs for removing and installing various roof insulation systems; 33 CLINs for removing, repairing, and replacing various types of roofing systems; 26 CLINs for removing and replacing roof flashing systems; 20 CLINs for miscellaneous roof accessories and items of work; and 1 CLIN for bonding.

The Army received six bids at the following evaluated prices:

Alice:	$3,588,340
Cram Roofing:	3,750,514
Port:	4,546,310
Beldon Roofing:	4,960,822
Rain King:	5,045,155
A.D. Willis:	6,047,630

The contracting officer's review of the bids showed that Alice had submitted a unit price of 1 cent for each of 56 line items, raising the concern that the firm's bid might be unbalanced.[1] However, the contracting officer's review of the firm's pricing led her to conclude otherwise, and she awarded the contract to Alice. This action prompted Port to file a protest in our Office in which it argued that Alice's bid was unbalanced. In preparing her response to that protest, the contracting officer reviewed Alice's bid again and concluded that it was indeed unbalanced, for the reasons discussed below. The Army terminated Alice's contract on November 5 and awarded the contract to Port on November 7. Port withdrew its protest.

Alice filed the instant protest on November 15 challenging the decision that its bid was mathematically and materially unbalanced. The firm supplemented its protest with supporting information on November 18.[2]

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[1]This same concern arose in connection with Cram's bid, which was eventually rejected as unbalanced.

[2]We do not agree with Port's assertion that Alice's November 15 protest should have been dismissed as lacking a valid basis, pursuant to Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99. The allegations in that case were dismissed because they were either purely speculative or baseless on their face, circumstances not present here. While Port objects to our advising Alice that it could supplement
(continued...)

An examination of bid unbalancing has two aspects. Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30. First, the bid must be evaluated mathematically to determine whether each item carries its share of the cost of the work plus overhead and profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. Id. Unbalancing typically arises either between base period prices and option period prices or, in a requirements-contract solicitation such as this one, between line items for different goods or services. Custom Envtl. Serv., Inc., B-252538, July 7, 1993, 93-2 CPD ¶ 7.

If a bid is found to be mathematically unbalanced, it must be evaluated to determine the cost impact of the price skewing. Where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid would result in the lowest ultimate cost to the government, the bid is materially unbalanced and may not be accepted. Federal Acquisition Regulation (FAR) §§ 14.404-2(g); 15.814; Westbrook Indus., Inc., supra.

Turning first to the issue of mathematical unbalancing, Alice's 1-cent bids for 56 of the 210 CLINs are indisputably below cost and nominal. The question arises, then, whether Alice's prices for any other CLINs are enhanced. The contracting officer compared Alice's prices with those submitted by the other bidders and the government estimate and determined that Alice had submitted enhanced pricing for five base period CLINs and their five option period counterparts. The relevant base

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[2](...continued)
its protest on November 18, such advice was entirely consistent with our long-standing position that we will consider later-raised contentions that merely provide additional support for an earlier, timely raised objection. Prospect Assocs., Inc., B-260696, July 7, 1995, 95-2 CPD ¶ 53. We also do not share Port's view that Alice was put on notice of the specific support for its allegations when the Army terminated its contract on November 5. Port's prior protest notwithstanding, there is no evidence that Alice knew the precise basis for the agency's determination until November 7 at the earliest. As a result, the firm's November 18 filing, filed 10 days later, would have been timely even if we had considered it to be a new and separate protest. See Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)).

period CLINs concerned various types of built-up roofing, roll roofing, and modified bituminous roofing replacement, and their pricing was as follows:[3]

	Alice	**Cram**	**Port**	**Beldon**	**Rain**	**Willis**	**IGE**
0011A	$430	$475	$195	$450	$165	$300	$225
0011B	595	500	220	455	215	700	225
0011C	100	65	55	50	30	125	16
0012	415	450	250	250	165	400	300
0013A	415	500	210	450	205	300	250

Alice argues that its prices are not enhanced because Cram, Willis, or Beldon submitted higher prices on one or more of these line items. However, a comparison of a competitor's prices with one's own prices does not by itself establish that one's prices are not enhanced, see David Boland, Inc., B-244817, Oct. 29, 1991, 91-2 CPD ¶ 397, particularly where, as here, the bid of one competitor (Cram) was rejected as unbalanced and the bid of another competitor (Willis) was the highest priced. See Custom Envtl. Serv., Inc., supra. Even if the third competitor's (Beldon's) pricing is used for the sake of comparison, Alice still submitted by far the highest prices on 6 of the 10 line items at issue. More important, Alice does not dispute the agency's contention that its prices for these CLINs carry far more than their share of the cost of the work, plus overhead and profits, and thereby embody the very definition of enhanced pricing. Westbrook Indus., Inc., supra. Under the circumstances, we agree with the Army that Alice's bid contains enhanced prices and is, as a result, mathematically unbalanced.

Having made this determination, we turn to the question whether Alice's bid is materially unbalanced. For unbalancing in requirements contracts such as this one, the accuracy of the solicitation estimates is critical, since the unbalanced bid will become less advantageous than it appears only if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced ones. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126. Where an agency has reason to believe that its actual needs may deviate significantly during performance from the solicitation estimates, it may reasonably view a mathematically unbalanced bid as not clearly representing the lowest cost to the government and therefore as materially unbalanced. Beldon Roofing & Remodeling Co., B-253199; B-253199.2, Aug. 18, 1993, 93-2 CPD ¶ 103.

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[3]Pricing for the option period line items differed only slightly, if at all, from the pricing for the base period line items.

The contracting officer's determination that Alice's bid was materially unbalanced was premised upon the Army's belief that, given the inherent uncertainty of roofing estimates, its actual needs may deviate significantly from the solicitation's estimated quantities. The Army explains that it generates its estimates by using the list of facilities expected to require roofing work; calculating the square footage of those buildings; and using the square footage, age, and types of roofs involved to estimate the probable quantities of materials that will be needed for each building. The agency totals these quantities and incorporates them into the solicitation as the estimated quantities. Despite the fact that these are the Army's best estimates, the actual quantities ordered will depend upon such unpredictable variables as the availability of funding; the effect of potential storm damage on repairs to be made; and the impossibility of determining the exact roofing needs of a given building until the exterior of the roof is actually removed. The Army states that this unpredictability is illustrated by the fact that the actual quantities ordered under the prior contract for roofing at these installations deviated significantly from the estimated quantities in the prior solicitation.

Using this illustration to go one step further, the contracting officer multiplied the unit prices submitted by the three lowest bidders here by the actual quantities ordered under the prior contract to determine whether Alice's bid was materially unbalanced. Her calculations showed that if the actual quantities ordered under the present contract tracked the actual quantities ordered under the prior contract, Alice's bid would not represent the lowest price to the government. In particular, if the Army were to order more of a line item for which Alice's pricing was enhanced, as it had done in the past, there was reasonable doubt that the firm's bid would be the lowest priced.

Alice objects that this calculation is unreasonable because the prior contract was "significantly larger" than the present contract, thereby skewing the results. Alice contends that a more reasonable calculation would be one based upon the percentage by which the actual quantities ordered varied from the estimated quantities under the prior contract. Relying on this calculation, Alice argues that its bid would be the lowest priced.

It may be appropriate in some cases to use the actual quantities ordered under a prior contract to gauge whether a bid under a future contract is materially unbalanced. See Sanford Cooling, B-242423, Apr. 15, 1991, 91-1 CPD ¶ 376. This is not such a case. The Army has made a persuasive showing, unrebutted by Alice, that the actual quantities ordered under a roofing contract are dependent upon wholly unpredictable and unique variables--the ability to issue delivery orders is affected by the availability of funding, and the need for and extent of roof repair and/or replacement is affected by potential storm damage and dictated by the latent condition of individual roofs. Given the very nature of these variables, the actual quantities ordered under the prior contract have no specific predictive value with respect to determining the actual quantities that will be ordered under the present solicitation.

However, this conclusion does not invalidate the premise underlying the Army's actions--that the divergence between the actual quantities ordered and the estimated quantities under the prior contract is evidence that this same divergence will occur under the present contract. According to the Army, since the actual quantities ordered under a roofing contract bear no predictable or consistent relationship to the estimated quantities, its acceptance of Alice's mathematically unbalanced bid would require the Army to assume an unreasonable degree of risk that the mix of CLINs actually ordered will not exactly track the estimated quantities, thus resulting in the agency's paying more than if it had awarded the contract to a bidder submitting a bid in which each CLIN represented a fair share of the cost.

The critical question in the determination of material unbalancing here is whether the actual mix of line items ordered will involve a mix different from that set forth in the IFB's estimates, which could lead to the agency ordering proportionately more of those CLINs for which Alice bid an enhanced price, and proportionately less of the CLINs for which Alice bid nominal prices. If the mix of those CLINs is subject to significant variation, that variation creates reasonable doubt that Alice's bid will ultimately represent the lowest overall cost to the government.

In our view, the inherent uncertainty of roofing estimates means that the actual orders could vary significantly from the IFB's estimates, both with respect to the mix of CLINs and the quantities ordered. As a result, the agency had a reasonable basis for doubting that Alice's mathematically unbalanced bid would ultimately represent the lowest cost to the agency. Beldon Roofing & Remodeling Co., supra; Custom Envtl Serv., Inc., supra; Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248. Alice's arguments to the contrary are either centered around comparisons drawn between its bid and the actual ordered quantities under the prior contract, a methodology which makes no sense in this case, or purely speculative, and provide us no basis to object to the Army's determination.[4]

The protest is denied.

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[4]Alice also seizes on the agency's specific use of the quantities actually ordered under the prior contract to argue that the present solicitation's estimated quantities are inaccurate. The firm essentially contends that if the Army believed the actual quantities ordered under the prior contract would track those ordered under the present contract, the estimates do not reflect this belief. The record is clear that the Army held no such belief, but made the calculations that it did in an effort to show that the estimates were inherently uncertain.