



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G&C Enterprises, Inc.

File: B-250374

Date: January 26, 1993

Alan I. Saltman, Esq., Gary G. Stevens, Esq., and Kevin R. Garden, Esq., Saltman & Stevens, for the protester.
Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for C. Pyramid Enterprises, Inc., an interested party.

Monica Allison Ceruti, Esq., Department of the Air Force, for the agency.

Geoffrey R. Hamilton, Esq., and Lynn H. Gibson, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that a bid must be rejected as unbalanced and front-loaded is denied where: (1) there is no reasonable doubt that award will result in the lowest cost to the government, and (2) the bid is not so grossly unbalanced as to result in an improper advance payment.
2. Proposed awardee's allocation of costs among line items did not misstate costs or improperly reserve to the proposed awardee the option of reallocating costs and receiving the award or rejecting the contract where the solicitation did not prohibit submission of unbalanced bids.

DECISION

G&C Enterprises, Inc. (G&C) protests the proposed award of a contract to C. Pyramid Enterprises, Inc. (Pyramid) under invitation for bids (IFB) No. F41689-92-B-0014, issued by the Department of the Air Force, for additions and alterations to the commissary at McGuire Air Force Base, New Jersey. G&C principally contends that Pyramid's bid should be rejected as materially unbalanced and front-loaded such that an award to Pyramid would result in improper advance payments. In the alternative, G&C contends that Pyramid's bid allocating costs among line items was not submitted in good faith and should be rejected.

We deny the protest.

The IFB, issued on August 4, 1992, contains four contract line item numbers (CLIN) relevant to this protest: CLIN 0001AA called for a lump-sum price for building, complete; CLIN 0001AB called for a lump-sum price for site work and utilities; CLIN 0001AC called for a lump-sum price for contractor furnished/contractor installed (CFCI) equipment; and CLIN 0002, additive no. 1, called for a lump-sum price for building with complete roof. The IFB contemplated award of one fixed-price contract to the responsive, responsible bidder whose aggregate bid was low.

Seven bids were received by bid opening on September 10, 1992. The aggregate bid prices ranged from Pyramid's low bid of \$5,223,000, followed by G&C's bid of \$5,349,000, up to \$7,993,317. The government's estimate for the project was \$7,248,583. Pyramid's bid under CLIN 0001AA, for building complete, was \$4,767,000, and G&C's bid for the line item was \$3,652,759. The bids for CLIN 0001AA ranged from G&C's low price of \$3,652,759 to a high of \$6,037,000; the government estimate for the line item was \$5,200,000.

With respect to CLIN 0001AC, for CFCI equipment, Pyramid bid \$14,000 while G&C bid \$1,168,500. The other bids on this line item, for which the government estimated a cost of \$1,478,421, ranged from a low of \$4,000 to a high of \$1,860,000.

Suspecting that Pyramid's bid of \$14,000 for CLIN 0001AC was a mistake, in view of the government's estimate of \$1,478,421 for this item, the contracting officer requested Pyramid to verify its bid. In a letter dated September 15, 1992, Pyramid confirmed its bid price and stated that its bid contained no mathematical errors. In subsequent correspondence with the Air Force, Pyramid stated that it included some costs for equipment in its bid for the basic building under CLIN 0001AA and could shift those costs to CLIN 0001AC for the administrative convenience of the Air Force. On September 17, 1992, G&C filed this pre-award protest with our Office.

G&C principally argues that Pyramid's bid should be rejected because it is both materially unbalanced and front-loaded such that an award to Pyramid would result in improper advance payments. More specifically, G&C argues that Pyramid's below-cost price for equipment under CLIN 0001AC enabled Pyramid to enhance and front-load the price of the basic building under CLIN 0001AA by well over \$1,000,000 without increasing the bid's overall price. G&C claims that since a majority of the costs, *i.e.*, equipment costs, that Pyramid allegedly front-loaded to CLIN 0001AA will not be incurred until the later phases of the project, progress

payments that are made in the initial phases of the contract will amount to improper advance payments. G&C further contends that as a direct result of Pyramid's actions there is also substantial doubt that an award based on Pyramid's bid would result in the lowest overall cost to the government.

Before a bid can be rejected as unbalanced, it must be found both mathematically and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. QMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. A mathematically unbalanced bid is considered materially unbalanced and cannot be accepted where there is a reasonable doubt that acceptance of the bid will result in the lowest overall cost to the government. Star Brite Constr. Co., B-244122, Aug. 20, 1991, 91-2 CPD ¶ 173.

Initially, we note that the solicitation did not contain any clause prohibiting the submission of mathematically unbalanced bids. Even if Pyramid's statement regarding the allocation of equipment costs to CLIN 0001AA could be construed as evidence of mathematical unbalancing, Pyramid's bid is not materially unbalanced because there is no reasonable doubt that acceptance of the bid will result in the lowest overall cost to the government. The IFB does not contemplate option periods and does not contain estimated quantities susceptible to material fluctuations. Rather, the IFB simply contemplates the award of one firm, fixed-price contract to the low bidder. Pyramid's overall price for all items, which is \$126,000 lower than the overall price submitted by G&C--the next lowest bidder--is clearly the low evaluated bid. Accordingly, there is no possibility that an award to Pyramid will not result in the lowest cost to the government. See Star Brite Constr. Co., supra.; Seaward Corp.--Recon., B-237107.3, Oct. 24, 1990, 90-2 CPD ¶ 324.

As noted by G&C, there are certain circumstances where a bid, which is grossly unbalanced, should be rejected if payments made under a contract awarded pursuant to such a bid would amount to an improper advance payment. 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.¹ F&E Erection Co.,

¹The Air Force claims that advance payments will be precluded under the contract because progress payments are to be made according to a schedule of values, on the basis of actual work performed. We have rejected this argument

B-234927, June 19, 1989, 89-1 CPD ¶ 573. Such advance payments would be detrimental to the competitive bidding system, 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.

Here, whether or not Pyramid's price allocation is mathematically unbalanced, we do not regard any possible unbalancing in Pyramid's bid as so gross as to require rejection of its bid. Indeed, Pyramid's price for CLIN 0001AA of \$4,767,000 is not only in line with the other bids received which ranged from \$3,652,759 to \$6,037,000, but was the third lowest of the seven bids for the line item and was \$433,000 below the government estimate. Therefore, Pyramid's bid was not so front-loaded as to require rejection. See Seaward Corp.--Recon., SUPRA.

In the alternative, G&C alleges that Pyramid's bid should be rejected because it did not accurately represent Pyramid's line item costs contrary to the Federal Acquisition Regulation (FAR)² and was improperly structured to allow Pyramid "two bites at the apple." More specifically, G&C complains that Pyramid misstated its line item costs by placing costs for equipment under CLIN 0001AA; the effect, according to G&C, is that Pyramid reserved the option after bid opening of modifying its bid to reallocate costs and receiving the award, or, if it no longer desired the contract, refusing to modify its bid. However, as noted previously, the solicitation did not prohibit the submission of mathematically unbalanced bids; therefore, the allocation of costs between line items is within the bidder's discretion and there is nothing in Pyramid's bid that requires modification. To the extent that G&C is arguing that Pyramid might seek to modify its price structure at some point in the future, this argument is purely speculative and provides no basis for objecting to the terms of Pyramid's bid.

where, as here, the contractor is required to submit individual prices for separate line items and this breakdown is incorporated into the contract, since the contractor should receive progress payments based on the amount it bid for each particular line item. See Seaward Corp.--Recon., SUPRA.

²Specifically, the protester refers to the clause at FAR § 52.214-4, incorporated in the solicitation, which requires bidders responding to a solicitation to "provide full, accurate and complete information."

The protest is denied, and therefore, G&C's claim for the costs of filing and pursuing the protest, including attorneys' fees, is also denied.

for Seymour E. Gross
James F. Hinchman
General Counsel