



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Advanced Modular Space, Inc.

File: B-265860

Date: October 6, 1995

Jim Attrell for the protester.

Cecilia R. Jones, Esq., and Alden Abbott, Esq., Department of Commerce, for the agency.

Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

There is no legal basis to object to the acceptance of a bid for the supply of pre-manufactured buildings and site preparation work on the grounds that the line item bid for the site preparation work was below-cost to circumvent the Davis-Bacon Act and bid guarantee requirements, where there is no allegation of overstated line item pricing.

DECISION

Advanced Modular Space, Inc. (AMS) protests that the Department of Commerce must reject the low bid of Ramtech Building Systems, Inc., under invitation for bids (IFB) No. 51RANA500096 for pre-manufactured buildings and site work.

We dismiss the protest.

The IFB, issued as a total small business set-aside, contemplates the award of a contract for three pre-engineered, pre-manufactured modular office buildings and any necessary site work. Specifications for the modular office buildings were provided and site work identified. Bidders were informed that site work would include site preparation, backfill, design and construction of necessary foundations, access ramps, stairs and landings, and site utility work for each building. In addition, the contractor was responsible for all electrical, water, sewer and utility connections.

The bid schedule required bid prices for the following contract line items (CLIN):

0001	Site work	lump sum		\$ _____
0002	Modular office building	3 each	\$ _____	\$ _____
		Total Bid		\$ _____

The IFB contemplated a single award based on the lowest total bid price. The IFB stated that CLIN 0001 was considered to be construction services and that the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a) (1994) and the attached Department of Labor general wage decision were applicable. In addition, the IFB stated that if the bid price for CLIN 0001 exceeded \$25,000, the bidder was required to submit a bid guarantee in the amount of 20 percent of the bid price for the CLIN.

Commerce received the following five bids:¹

	<u>0001</u>	<u>0002</u>	<u>TOTAL</u>
Ramtech	\$23,450	\$249,702	\$273,152
AMS	\$92,100	\$214,227	\$306,327
Bidder A	NSP	\$329,592	\$329,592
B	\$4,200	\$339,075	\$343,275
C	\$119,556	\$269,679	\$389,235

Because its bid price for CLIN 0001 was below \$25,000, Ramtech did not provide a bid guarantee. Commerce determined that Ramtech's bid was responsive, and this protest followed.²

AMS protests that Ramtech's bid price for CLIN 0001 is below-cost, and is intended to avoid the payment of wage rates in accordance with the Davis-Bacon Act wage determination and to avoid the application of the bid guarantee requirements.

A protester's claim that a bidder has submitted an unreasonably low price or below-cost bid or CLIN price is not a valid basis for protest; the submission of a below-cost bid is not illegal, and the government cannot withhold award simply because an otherwise responsive bid is below-cost. BFPE Int'l, B-248783, Sept. 25 1992, 92-2 CPD ¶ 206. A bidder may properly decide, in its business judgment, to submit a price that is extremely low or below-cost. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. Specifically, the submission of an allegedly below-cost price for construction services does not indicate an intent to violate the Davis-Bacon Act or its applicable wage determination; even if a bid indicates hourly rates below those specified in the David-Bacon Act wage determination, that bidder is nonetheless eligible for award, provided its bid does not evidence an intent to

¹The independent government cost estimate was \$21,000 for delivery and set-up, \$7,500 for utility connections, and \$213,840 for the modular office buildings for a total estimate of \$242,340.

²This protest is being resolved under the express option procedures of our Bid Protest Regulations, 4 C.F.R. § 21.8 (1995).

violate the Davis-Bacon Act and the firm is otherwise responsible. See The Galveston Aviation Weather Partnership, B-252014.2, May 5, 1993, 93-1 CPD ¶ 370 (below-cost bid for services covered by the Service Contract Act of 1965 was acceptable). Here, Ramtech has unequivocally obligated itself in its bid to tender the exact performance called for in the IFB, including the requirements of the Davis-Bacon Act;³ thus, Ramtech's low price for CLIN 0001 alone does not make its bid nonresponsive or make the award otherwise legally objectionable.⁴ Id.; Oregon Iron Works, Inc., B-247845, May 27, 1992, 92-1 CPD ¶ 474.

AMS's complaint that Ramtech unbalanced its bid to circumvent the obligation to submit a bid guarantee is not a legal basis to object to the award, where, as here, there is no allegation that any CLIN price was overstated. Before a bid can be rejected as unbalanced, it must be found to both mathematically and materially unbalanced, and a bid is only mathematically unbalanced if it contains both understated and overstated costs. Stanley Aviation, Inc., B-256650, July 14, 1994, 94-2 CPD ¶ 23. In any case, there is no doubt here that acceptance of Ramtech's bid will result in the lowest cost to the government since the contractor is required to provide all CLINs.. See BFPE Int'l, supra. Finally, Ramtech's bid took no exception to the bid guarantee requirements, but properly did not contain a guarantee because its bid on the site preparation CLIN was less than \$25,000. See IMPSA Int'l, Inc., B-221903, June 2, 1986, 86-1 CPD 506.

The protest is dismissed.

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³The Davis-Bacon Act applies to this CLIN since Ramtech price exceeds \$2,000. 40 U.S.C. § 276(a) In response to the protest, Ramtech confirmed its intent to comply with the Davis-Bacon Act, including paying its employees at the wage determination rates.

⁴ The agency's decision that the awardee can perform at the price offered is an affirmative determination of responsibility, which we will not review absent circumstances not present here. See 4 C.F.R. § 21.3(m)(5); Trak Eng'g, Inc., B-231791, Oct. 28, 1988, 88-2 CPD ¶ 402.