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United States Government Accountability Office
Washington, DC 20548

# Decision

**Matter of:** Ronsons SDVOSB P&L JV-1

**File:** B-410605

**Date:** January 6, 2015

Lucas R. Yonkman, for the protester.
Joaquin M. Hernandez, Esq., Schwabe, Williamson & Wyatt, P.C., for Glen/Mar Construction, Inc., an intervenor.
Siri C. Nelson, Esq., Department of the Army, for the agency.
Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest alleging that the awardee's bid should have been rejected as nonresponsive because it was materially unbalanced is denied where the record shows that the agency conducted a reasonable price analysis.

2. Protest alleging that the awardee's proposal should have been rejected as technically unacceptable for relying on an unqualified subcontractor is denied because it fails to state a factually or legally sufficient basis for protest.

## DECISION

Ronsons SDVOSB P&L JV-1, of Oak Harbor, Washington, protests the award of a contract to Glen/Mar Construction, Inc., of Clackamas, Oregon, by the Department of the Army, Corps of Engineers, under invitation for bids (IFB) No. W912DW-14-C-0029 for electrical upgrades at Joint Base Lewis-McChord, Washington. The protester alleges that the awardee's bid should have been rejected because the awardee's bid was materially unbalanced, and the awardee relied on a subcontractor that lacked a required certification.

We deny the protest.

BACKGROUND

On August 12, 2014, the agency issued the IFB for electrical upgrades at Joint Base Lewis-McChord, Washington, as a set-aside for service-disabled veteran-owned small businesses. See, e.g., IFB at 00 72 00. The IFB contemplated the award of a fixed-price contract. Id. at 00 21 00. The electrical work to be performed was divided into seven contract line item numbers (CLIN). The base scope of work included the first four CLINs, and the other three CLINs were for optional work. Id. at 00 11 00-5. Award was to be made on a lowest-priced, technically acceptable basis. See id. at 00 21 00 (incorporating, by reference, FAR clause 52.214-19, Contract Award--Sealed Bidding--Construction (AUG 1996)).

The agency received eight bids in response to the IFB. See, e.g., Contracting Officer's (CO) Statement (Nov. 3, 2014) at 5. The independent government estimate (IGE) and bids (from lowest to highest) for the base scope of work were:

| | **CLIN 0001** | **CLIN 0002** | **CLIN 0003** | **CLIN 0004** | **TOTAL** |
|---|---|---|---|---|---|
| IGE | $78,824 | $66,117 | $1,019,715 | $64,851 | $1,229,507 |
| Ronsons (Offeror 7) | $92,983 | $113,456 | $978,245 | $102,816 | $1,287,500 |
| Glen/Mar (Offeror 3) | $137,842 | $110,716 | $1,176,356 | $119,865 | $1,544,779 |
| Offeror 8 | $54,377 | $76,600 | $1,343,457 | $76,585 | $1,551,019 |
| Offeror 5 | $398,985 | $40,027 | $1,141,792 | $50,296 | $1,631,100 |
| Offeror 1 | $111,500 | $149,000 | $1,281,000 | $114,000 | $1,655,500 |
| Offeror 2 | $125,000 | $175,000 | $1,300,000 | $120,000 | $1,720,000 |
| Offeror 4 | $96,560 | $126,976 | $1,482,689 | $183,692 | $1,889,917 |
| Offeror 6 | $70,000 | $70,000 | $1,865,000 | $60,000 | $2,065,000 |

See AR, Tab 10, Abstract of Bids, ¶¶ 8, 9.

The IGE and bids (from lowest to highest) for the optional work were:

| | **CLIN 0005** | **CLIN 0006** | **CLIN 0007** | **TOTAL** |
|---|---|---|---|---|
| IGE | $341,666 | $342,418 | $23,370 | $707,454 |
| Offeror 6 | $30,000 | $250,000 | $40,000 | $320,000 |
| Offeror 4 | $39,470 | $262,885 | $39,470 | $341,825 |
| Glen/Mar (Offeror 3) | $47,861 | $266,510 | $38,440 | $352,811 |
| Offeror 5 | $48,466 | $273,730 | $39,603 | $361,799 |
| Offeror 8 | $51,992 | $330,772 | $47,071 | $429,835 |
| Ronsons (Offeror 7) | $296,175 | $307,535 | $32,913 | $636,623 |
| Offeror 2 | $325,000 | $325,000 | $50,000 | $700,000 |
| Offeror 1 | $388,000 | $400,000 | $51,000 | $839,000 |

Id.

Glen/Mar's total evaluated price, inclusive of the base and optional CLINs, of $1,897,590 was the lowest-priced bid; Ronsons' total evaluated price of $1,924,123 was second lowest. Id. ¶ 6. The agency selected Glen/Mar's lowest-priced, technically acceptable bid for award after concluding that Glen/Mar's bid was reasonable and not materially unbalanced. See AR, Tab 11, CO's Determination of Responsibility and Price Reasonableness, at 4-6. This protest followed.

## DISCUSSION

Ronsons alleges that the Corps should have rejected the awardee's bid for two reasons. First, the protester argues that the awardee's bid is materially unbalanced, as demonstrated by the awardee's unrealistically low proposed price for optional CLIN 0005. See Protest (Oct. 7, 2014) at 1-2; Protester's Comments (Nov. 14, 2014) at 1-2. Second, the protester alleges that the awardee will rely on a subcontractor that does not satisfy one of the IFB's certification requirements. See Protest at 2; Protester's Comments at 2-3. For the reasons that follow, we deny the protest.[1]

### Unbalanced Bid

Ronsons first argues that Glen/Mar's bid was materially unbalanced. Specifically, the protester argues that the awardee's bid of $47,861 for CLIN 0005 was unrealistically low compared to the IGE of $341,666 for the work, and compared to the protester's understanding of the work based on quotes it received from prospective electrical subcontractors. See Protest at 2; Protester's Comments at 1-2. In essence, the protester argues that the awardee front-loaded its bid by overstating the price for the base work, thereby creating risk that the awardee's bid would not provide the lowest price to the government in the event optional CLIN 0005 is not exercised. See Protest at 2; Protester's Comments at 1-2. The record here shows that the Corps concluded that the awardee's bid was not materially unbalanced; the agency also concluded that, even if the bid was unbalanced, any possible risks arising from the bid were not unreasonable. For the reasons discussed below, we find that the Corps' evaluation was reasonable.

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[1] Ronsons also raises several other arguments concerning the solicitation: (1) the agency failed to provide clear and accurate specifications in the IFB and responses to offerors' questions; (2) the agency failed to provide offerors with a reasonable period of time to review and respond to the agency's responses to offerors' questions before the submission of bids; and (3) the IFB should have required offerors to submit proof of their subcontractors' qualifications and certifications with their bids. See Protest at 2; Protester's Comments at 3. We dismiss these protest allegations because they are untimely challenges to the terms of the solicitation, which were required to have been raised prior to bid opening. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014).

Under FAR clause 52.214-19(d), "[t]he Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items." A bid is materially unbalanced if it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work. Id.; MCI Constructors, Inc., B-274347, B-274347.2, Dec. 3, 1996, 96-2 CPD ¶ 210 at 5. While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. W.B. Constr. & Sons, Inc., B-405818, B-405818.2, Jan. 4, 2012, 2012 CPD ¶ 17 at 6. Rather, where the contracting officer receives an unbalanced bid or offer, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, and whether a contract will result in unreasonably high prices for contract performance. Id.; Enco Dredging, B-284107, Feb. 22, 2000, 2000 CPD ¶ 44 at 5. Our Office will review for reasonableness both the agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. W.B. Constr. & Sons, Inc., supra, at 6; Enco Dredging, supra, at 6.

The record here shows that, even if the awardee's bid for CLIN 0005 was materially understated, Glen/Mar's proposed pricing for the base scope of work was not materially overstated. The eight bids received by the agency for the base scope of work ranged from the protester's low bid of $1,287,500 to a high bid of $2,065,000; the awardee's bid for the base scope of work, $1,544,779, was the second lowest. See, AR, Tab 10, Abstract of Bids, ¶ 9. Therefore, the agency reasonably determined that Glen/Mar's bid for the base scope of work was not materially overstated based on the competitive bids received. See, e.g., AR, Tab 11, CO's Determination of Responsibility and Price Reasonableness, at 6; FAR clause 52.214-19(d) (providing that unbalanced pricing exists only when there are both significantly below cost and overstated line items).

In any event, even if we found Glen/Mar's bid to be materially unbalanced, the Corps reasonably concluded that acceptance of the bid did not create an unacceptable risk to the government. Here, the optional requirements are reasonably certain to exist and there is a reasonable expectation that funds will be available to permit exercise of the options. Prior to issuing the IFB, the CO determined that it was in the best interest of the government to include option CLINs in the evaluation for award because, although the full requirement could not be funded at the time of the IFB's issuance, the need for the optional work was verified and had been budgeted for in the future. AR, Tab 5, CO's Determination to Include Options, ¶ 1.a. In light of the verified need and budgeting for the work, the agency concluded that there was a "reasonable likelihood that the option CLINs will be exercised." Id. ¶ 1.d. In the time since the award of the base work, the agency represented that it has obtained the funds necessary to award optional CLINs 0005 and 0007. See CO's Statement at 9. Thus, the record does not demonstrate a reasonable basis to doubt that the acceptance of Glen/Mar's bid will result in the lowest overall cost to the government.

Additionally, the Corps specifically evaluated the potential risk associated with the awardee's bid for optional CLIN 0005. Prior to award, the CO determined that, although the awardee's bid for CLIN 0005 presented "some very limited performance risk," there was not a significant risk to the government that it would face unreasonably high prices for contract performance because Glen/Mar's overall bid was very close to the IGE and the second and third lowest bids. AR, Tab 11, CO's Determination of Responsibility and Price Reasonableness, at 6. Therefore, the agency reasonably concluded that, even assuming that Glen/Mar's bid was unbalanced, there was no unacceptable risk to the government.

In sum, we find that the Corps reasonably concluded that Glen/Mar's bid was not materially unbalanced, or, alternatively, did not create an unacceptable risk to the government, and therefore deny the protest.

Subcontractor Qualifications

Ronsons also alleges that "Glen/Mar Construction'[s] proposal is based upon an unqualified subcontractor performing the majority of the work," Protest at 2, and "[i]t is our belief that the subcontractor who provided pricing to Glen/Mar Construction did not meet the qualifications necessary to perform the work," Protester's Comments at 2. As an initial matter, we find that the protester's unsupported allegations are insufficient to state an adequate basis of protest. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). Here, the protester's bare allegations do not meet this standard.

In any event, the only requirement that Ronsons asserts that Glen/Mar's alleged subcontractor fails to meet is for installation engineers to have International Brotherhood of Electrical Workers' medium voltage certification, as required by Specification 33 70 02.00 10, SD-07 ¶ 1.3. See Protest at 2. This argument, however, fails to provide a basis on which to sustain the protest. In the absence of a requirement that offerors provide proof of qualifications or certifications prior to award--which was not a requirement in this IFB--an offeror's failure to provide such proof is not a basis on which to disqualify or downgrade its proposal because such qualifications or certifications are performance provisions rather than preconditions for award. Evergreen Fire & Sec., B-296510, Aug. 22, 2005, 2005 CPD ¶ 165 at 3; United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43 at 6-7. Whether an offeror complies with the contract's qualification and certification requirements is a matter of contract administration, which we do not review as part of our bid protest function. See, e.g., 4 C.F.R. § 21.5(a); SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 6.

Therefore, we find that the protester's allegations challenging the qualifications of the awardee's subcontractor fail to state an adequate basis for protest.

We deny the protest.

Susan A. Poling
General Counsel