



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aztec Development Co.

File: B-270275

Date: February 21, 1996

Troy M. Deal, Jr. for the protester.

Nilza F. Velazquez, Esq., Department of Transportation, United States Coast Guard, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Irrespective of whether protester's bid for a fixed-price contract for survey and dredging services may have been mathematically unbalanced, the bid was not materially unbalanced where, in view of the short (14-day) contract performance period and the solicitation's payment provisions, award to the protester would have resulted in the lowest overall cost to the government, and acceptance of the bid would not have led to improper advance payments.

DECISION

Aztec Development Co. protests the rejection of its bid as materially unbalanced under invitation for bids (IFB) No. DTCGG1-95-B-3WK331, issued by the Department of Transportation, United States Coast Guard, for survey and dredging services at the entry channel to the United States Coast Guard Station Eatons Neck, Northport, New York.

We sustain the protest.

The IFB required bidders to submit prices for two line items. Line item No. 0001AA was to "[p]rovide pre-dredge and post-dredge hydrographic surveys"; the bid schedule provided a space for the bidder to enter its lump-sum price for the item. Line item No. 0001AB was to "[p]erform dredging and dispose of dredged material" at an estimated quantity of 10,000 cubic yards; the bid schedule provided spaces for the bidder to enter its unit (cubic yard) price and total (extended) price for the item. The bid schedule also had a space for the bid's total lump-sum price. The contractor was to furnish all labor, material, equipment, supervision, and transportation necessary for the entrance channel dredging. The IFB provided that performance of the contract was to be completed within 14 days after the contractor's receipt of the notice to proceed. The IFB also provided that the

government would issue progress payments on a monthly basis, or at more frequent intervals as determined by the contracting officer, to the successful contractor based on the work accomplished within that period.

Five bids were received in response to the IFB by bid opening on August 23, 1995. Aztec submitted the apparent low total bid of \$112,300, consisting of \$69,200 for the required pre/post-dredge hydrographic surveys (line item No. 0001AA) and \$4.31 per cubic yard for the required dredging and disposal of dredged materials (line item No. 0001AB). The apparent second low bid (at \$122,700, with a bid of \$15,700 for line item No. 0001AA and \$10.70 per cubic yard for line item No. 0001AB) was rejected as nonresponsive for providing less than the required 90 days for acceptance of the bid. Bristol Construction Corporation submitted the apparent next low bid at \$130,000 (with a bid of \$10,000 for line item No. 0001AA and \$12.00 per cubic yard for line item No. 0001AB).

Aztec's bid was rejected as materially unbalanced for grossly overstating its price for line item No. 0001AA (the pre/post-dredge surveys) and offering a nominal price for line item No. 0001AB (dredging and disposal). The agency determined that acceptance of the Aztec bid would be tantamount to allowing an improper advance payment since upon completion of the pre-dredge survey, Aztec could submit an invoice for progress payments amounting, at least, to more than one third (approximately \$34,600, or one half of its lump-sum line item 0001AA price) of its total bid price (of \$112,300) before it even began dredging.¹ Award was made to Bristol on September 25. This protest followed.

Aztec contends that its bid was not unbalanced. Aztec explains that, contrary to "industry practice," the IFB failed to provide a separate line item for a lump-sum price for the "very expensive" mobilization and demobilization costs involved in performing the contract. Aztec states that it chose to include its mobilization/demobilization costs in its lump-sum price for the surveys (line item No. 0001AA), rather than spreading those costs over the course of the contract in the firm's price for the dredging and disposal requirement (line item No. 0001AB). The protester contends that it would have been improper to include its mobilization/demobilization costs in its price for line item No. 0001AB, as the other bidders did, because that item referred only to the actual dredging and disposal of the dredged material, and not the transport of equipment or other mobilization costs. Aztec states that "[b]ecause of the short (14-day) dredging time allowance, [the protester] accepted this departure from industry standard of payment of

¹An advance payment occurs when a payment under a contract to provide services or deliver an article is more than the value of the services already provided or the article already delivered. See F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573.

[m]obilization costs in advance of dredging" since "payment was not due until job completion." Aztec states that due to the IFB's provision for progress payments on a monthly basis, its bid cannot result in an improper advance payment for the pre-dredging survey, as the agency contends, since full performance of the contract (within the required 14-day period) would be completed prior to any monthly progress payment.

An examination of bid unbalancing has two aspects. 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; if the bid is based on nominal prices for some work and inflated prices for other work, it is mathematically unbalanced. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government, or where the bid is so grossly front-loaded that its acceptance would be tantamount to allowing an advance payment. Federal Acquisition Regulation (FAR) §§ 14.404-2(g), 15.814(b)(2); Rust Int'l Corp.; ABB Susa, Inc./Brown & Root, a Joint Venture, B-256886.2 et al., Aug. 30, 1994, 94-2 CPD ¶ 84; ACC Constr. Co., Inc., B-250688, Feb. 16, 1993, 93-1 CPD ¶ 142.

Here, a single award is contemplated by the IFB for the two line items, the performance period is only 14 days, and the contractor ultimately was to be paid on the basis of its overall low, fixed price. In our view, then, irrespective of whether Aztec's bid is mathematically unbalanced, there is no doubt that the bid represents the lowest overall cost to the government compared to the other bids received. See Rust Int'l Corp.; ABB Susa, Inc./Brown & Root, a Joint Venture, supra.²

Further, acceptance of Aztec's bid would not lead to an improper advance payment since payment under the contract is expected to be made after full performance. As the protester points out, the required contract performance period is 14 days. The IFB's terms provide no basis under which the contractor would be entitled to receipt of any payments prior to the scheduled completion of the work. The agency posits no scenario under which contract performance could be delayed to the point where progress payments would be made. In this connection, as stated above the IFB provides that progress payments will be issued on a monthly basis (more

²Even under the remote possibility that the contract would have to be terminated for default after the pre-dredging survey (i.e., after partial completion of line item No. 0001AA), Aztec, not the government, would be responsible for any costs to complete the work above Aztec's low total bid. See FAR § 52.249-10.

frequently only as determined by the contracting officer); full performance of the contract thus would be completed prior to the issuance of any required monthly progress payment.

Accordingly, we find that the agency improperly rejected Aztec's bid, and we sustain the protest on that basis.

The agency has advised our Office that Bristol has completed performance of its contract under the IFB. Under the circumstances, we recommend that Aztec be reimbursed the costs of filing and pursuing this protest, and its bid preparation costs. Bid Protest Regulations, section 21.8(d), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(d)). Aztec should submit its detailed and certified claim for costs directly to the agency within 90 days after receipt of this decision. Bid Protest Regulations, section 21.8(f)(1).

The protest is sustained.

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