



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ranco Construction, Inc.

File: B-281242

Date: January 12, 1999

Edward J. Hoffman, Esq., and John W. Fowler, Jr., Esq., Blank, Rome, Comisky & McCauley, for the protester.

Michele Gregos for Ascend Construction Management, Inc., and DilipVerghese for D&K Construction Company, Inc., for Ascend Construction Management, Inc./D&K Construction Company, Inc., a Joint Venture, the intervenor.

Joseph J. Cox, Esq., U.S. Army Corps of Engineers, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that bid is so front-loaded that it is unbalanced is denied where record shows that the differences between the awardee's prices for the challenged line items and the other bidders' prices, as well as the government estimate, were not so great as to require a finding that the awardee's pricing was unbalanced.

DECISION

Ranco Construction Company, Inc. protests the award of a contract to Ascend Construction Management, Inc./D&K Construction Company, Inc, a Joint Venture, under invitation for bids (IFB) No. DACA51-98-B-0046, issued by the U.S. Army Corps of Engineers for various construction requirements at McGuire Air Force Base. Ranco contends that Ascend's bid was unbalanced and cannot properly form the basis for the awarded contract.

We deny the protest.

The IFB sought fixed-price bids for the demolition of certain preexisting structures, site preparation work, and construction of new structures for a large fire station and a radar and approach control (RAPCON) building. The requirements were divided among 10 contract line items (CLIN) for each of which bidders were required to submit lump-sum prices. Ranco's protest relates only to CLIN Nos. 0003 and 0007; CLIN No. 0003 covers all work associated with construction of the RAPCON facility and CLIN 0007 covers demolition of a pumphouse and removal of several underground storage tanks.

The agency received five bids. After bid opening, the apparent low bidder asserted that it had made a mistake in calculating its bid; the agency denied that firm's request for upward adjustment of its price but permitted the firm to withdraw its bid. Ascend was the apparent second-low bidder and Ranco was third-low. The agency made award to Ascend on September 30, 1998.

Ranco asserts that Ascend's bid should be rejected as unbalanced, specifically, because Ascend's prices for CLIN Nos. 0003 and 0007 are so inflated that they essentially will result in an advance payment. In support of its position, Ranco notes that Ascend's price for CLIN No. 0003 is approximately 25 percent higher than the next-low bid and almost twice the government estimate. As for CLIN 0007, Ranco notes that Ascend's bid is almost twice the next-low bid and more than twice the government estimate. Ranco concludes that this alleged unbalancing will result in a prohibited advance payment to Ascend because the work for these two CLINS must be performed early in the contract.¹

The current regulatory language governing unbalanced pricing in offers provides that unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over- or understated.² FAR § 15.404-1(g) (FAC 97-02). The current regulation requires that offers with separately priced line items be analyzed to determine if the prices are unbalanced, and indicates that cost or price analysis techniques are to be used in

¹In its comments responding to the agency's report, Ranco alleged for the first time that Ascend's bid was nonresponsive for several additional reasons. By notice dated November 16, 1998, we advised the parties that we considered these contentions untimely, and therefore not for consideration, because Ranco had failed to diligently pursue information as to Ascend's bid following the bid opening. Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210; see also Bio-Nomic Servs., Inc., B-278341, Dec. 24, 1997, 97-2 CPD ¶ 173 at 3. Ranco challenges our conclusion, arguing that, because it originally was only the third-low bidder, it had no reason to review the two lower bids at the time of bid opening. This argument is without merit. In Thomas May Constr. Co., we held that a bidder which fails to obtain bid information at the time of bid opening has not proceeded diligently, and that a protest based on information received pursuant to a Freedom of Information Act request filed more than 2 weeks after bid opening therefore is untimely. A bidder's ranking among the competing bidders has no bearing on the obligation to proceed diligently, and since all bidders have access to the bids at a public bid opening, we see no reason why the principle in Thomas May Constr. Co. should not apply to Ranco.

²The term "advance payment" is no longer used in discussing unbalanced pricing in the revised Part 15 of the Federal Acquisition Regulation (FAR), which applies to solicitations issued after January 1, 1998, such as the subject IFB.

this analysis. Id. Such techniques include, for example, comparison of proposed prices with other prices received in response to the solicitation, as well as comparison to an independent government estimate. FAR § 15.404-1(b).

Here, we see nothing improper in the agency's decision to accept the bid, since the agency had a reasonable basis for concluding that Ascend's pricing, including the pricing for CLIN Nos. 0003 and 0007, was not unbalanced. First, while Ascend's price for CLIN No. 0003 was the highest received, it was nonetheless broadly in line with the other bidders' prices. Aside from Ascend's bid and the bid withdrawn due to a mistake, the bids ranged from Ranco's \$1,500,000 to \$1,733,300. Ascend's bid of \$2,000,000 was only a third higher than Ranco's. Ascend's CLIN No. 0003 price also was less than twice the government's estimate of \$1,060,800. Again, while Ascend's price for CLIN No. 0007 (\$240,000) was the highest submitted, it was only slightly more than twice the government's estimate (\$107,000) and less than twice Ranco's bid of \$126,000. Moreover, while the protester alleges that the work covered by the two challenged line items will be performed earlier than other work, the agency and awardee dispute this, maintaining instead that much of the work is to be performed concurrently; we see nothing in the record to support the protester's position that the CLINs at issue will necessarily be performed first. Accordingly, we conclude that nothing in the relatively small price differences between bids required the agency to find that Ascend's bid was unbalanced.

The protest is denied.

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