

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

144709

Decision

Matter of: Star Brite Construction Company, Inc.

File: B-244122

Date: August 20, 1991

Sam Zalman Gdanski, Esq., for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that low bid should be rejected as nonresponsive because it is mathematically and materially unbalanced is denied where protester fails to demonstrate that bid contained both understated prices for some of the work and overstated prices for other work, and there is no doubt that award will result in the lowest overall cost to the government.
2. Submission of below-cost bid is not improper; the government may not properly withhold award merely because a responsive bid is below cost.
3. Protest that proposed awardee submitted below-cost price for one contract line item, and therefore either does not understand the work required or will not be able to perform the work required, is essentially a challenge to contracting officer's affirmative determination of responsibility, which the General Accounting Office will not review except in limited circumstances.

DECISION

Star Brite Construction Company, Inc. protests the proposed award of a contract to Sharp Construction Company, Inc. under invitation for bids (IFB) No. F07603-91-B8200, issued by the Department of the Air Force to replace the roof on the Aerial Port Facility, Building 505, at Dover Air Force Base, Delaware. Star Brite contends that Sharp's bid should be rejected as nonresponsive because it is unbalanced.

We deny the protest.

The IFB, issued on January 4, 1991, required bidders to submit separate prices for each of eight contract line item numbers (CLIN). CLIN 0001 called for a lump-sum price for all work associated with installing preformed metal roof panels; CLIN 0002 called for a lump-sum price for removing and disposing of materials containing asbestos; CLINs 0003 thru 0007 called for the unit and extended prices associated with furnishing, replacing, and removing estimated quantities of "steel roof deck" and "2 x 6 deck plank"; and CLIN 0008 called for a lump-sum price for all other required work not covered in CLINs 0001 thru 0007. The IFB contemplated award of one fixed-price contract to the responsive, responsible bidder whose aggregate bid was low.

Eight bids were received by the April 3 extended bid opening date ranging from Sharp's low bid of \$1,633,000 to \$3,894,543. The agency's estimate for the project was \$2,653,600. The lowest three bids submitted were as follows:

CLIN	Sharp	Star Brite	Marangro
0001	\$ 615,000	\$ 541,000	\$ 745,000
0002	25,000	398,000	442,750
03-7	7,500	10,000	10,250
0008	<u>985,500</u>	<u>942,000</u>	<u>800,000</u>
Total	\$1,633,000	\$1,891,000	\$1,998,000

Suspecting that Sharp's bid of \$25,000 for CLIN 0002 was a mistake (the agency's estimate for this item was \$200,000), the contracting officer requested that Sharp verify its bid. See Federal Acquisition Regulation (FAR) § 14.406-3(g)(1). In a letter dated April 22, Sharp responded by stating that it had examined all of its costs related to the project, including the costs related to CLIN 0002, and verified its aggregate bid of \$1,633,000. On April 23, Sharp and agency officials, including the base civil engineer, participated in a telephone conference call during which Sharp indicated that it understood the requirements and specifications related to CLIN 0002. Sharp also confirmed that its aggregate bid price was sufficient to cover all costs associated with CLIN 0002. Based on Sharp's explanation of its understanding of the requirements imposed by CLIN 0002, the base civil engineer determined that Sharp would be in full compliance with the requirements of the IFB related to asbestos abatement.^{1/}

^{1/} By letter dated May 9, the agency denied an earlier agency-level protest by Star Brite, and informed the protester that Sharp's bid would be considered for award. The agency has withheld award of the contract pending resolution of this protest.

Star Brite alleges that Sharp's bid should be rejected because it is mathematically and materially unbalanced. According to the protester, when compared to the prices submitted by the other seven bidders for CLIN 0002--which ranged from \$223,000 to \$446,250--the price Sharp submitted for that item is disproportionately low. As an additional basis for its contention, the protester submitted prices quoted to it by various firms for the asbestos abatement work required by the IFB ranging from \$336,753 to \$560,000. The protester argues that Sharp does not understand the scope of work required under CLIN 0002, and that, since the actual costs to Sharp of performing the asbestos abatement portion of the contract will exceed \$300,000, the agency's acceptance of Sharp's bid would create unacceptable risk to the government that the actual overall cost of the contract will not be the lowest.

The agency states that Sharp's bid does not contain overstated prices and thus is not mathematically unbalanced. The agency asserts that Sharp verified its bid and fully understands what is required by the IFB. The agency further argues that even if Sharp's price on CLIN 0002 is low, its bid is not materially unbalanced. According to the agency, since the IFB contemplates the award of a firm, fixed-price contract with no economic variables, and since no estimated quantities or option periods are involved, there is no doubt that award to Sharp will 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. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. A bid may not be found mathematically unbalanced absent evidence that it contains prices which are overstated. IMPISA Int'l, Inc., B-221903, June 2, 1986, 86-1 CPD ¶ 506. 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. OMSERV Corp., B-237691, supra. Here, we find that Sharp's bid is neither mathematically nor materially unbalanced, since there is no evidence that it contains enhanced or overstated prices, and there is no doubt that award to Sharp will result in the lowest overall cost to the government.

Although Star Brite alleges that the price submitted by Sharp for CLIN 0002 is disproportionately low, the protester does not contend, and there is no evidence in the record, that the other prices in Sharp's bid are overstated. Included with its comments on the agency report, the protester submitted a sworn affidavit from Kostas Smilios, President of Star Brite, who

states that he has 20 years of experience in estimating and performing contracts involving the type of roof construction called for by the IFB. Mr. Smilios also states that he was responsible for reviewing all estimates submitted to his firm in connection with the IFB, and for compiling and submitting Star Brite's complete bid to the agency.

After discounting the prices submitted for CLINs 0003 thru 0007 as insignificant to his analysis,^{2/} Mr. Smilios asserts that the prices Sharp submitted for CLINs 0001 and 0008, the only other "big ticket" items in the IFB, are "realistic and in line with the other line items bid by the other contractors, so there is no room to pull out the difference in price [Sharp allegedly needs] to absorb" the actual costs of performing CLIN 0002. Mr. Smilios concedes that Sharp's bid price for CLIN 0001 is realistic and consistent with the prices offered by the other bidders for that item. He points out that the difference of \$75,000 between Sharp's price for CLIN 0001 and Star Brite's lower price for that item is not enough to absorb the more than \$300,000 it would allegedly cost Sharp to complete the tasks required by CLIN 0002. Except for comparing the prices submitted by Sharp, Star Brite, and Marangro for CLIN 0008 (\$985,500, \$942,000, and \$800,000 respectively), Mr. Smilios does not allege that Sharp's price on that item is overstated. Since the protester has failed to show, and there is no evidence in the record, that Sharp's bid contained both overstated prices for some work and understated prices for other work, we see no basis to consider Sharp's bid to be mathematically unbalanced.

Consolidated Photocopy Co., Inc., B-234137, Apr. 18, 1989,
89-1 CPD ¶ 386.

^{2/} The IFB required bidders to insert unit and extended prices for estimated quantities for each of CLINs 0003 through 0007. The IFB contained FAR § 52.212-11, which in part provides that if "the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made. . . ." Sharp's unit prices ranged from \$1 to \$3.50 for approximately 1,000 units for each of these items (250 units for CLIN 0005); Sharp's combined extended price for CLINs 0003 through 0007, \$7,500, constitutes less than half of one percent of its aggregate bid. Even assuming that the actual quantities exceed by more than 15 percent the estimated quantities for these items, and that an equitable adjustment is made, given the \$258,000 difference between Star Brite's and Sharp's total bid, there is no basis upon which to conclude that any requirement for additional items would render award to Sharp more costly than award to Star Brite. See Kdisc, Div. of Keysor Century Corp., B-240850, Aug. 24, 1990, 90-2 CPD ¶ 157.

The protester also has failed to show how award to Sharp could result in other than the lowest overall price to the government. The IFB does not contemplate option periods and does not contain estimated quantities susceptible to material fluctuations. The IFB simply contemplates the award of one firm, fixed-price contract to the low bidder. Accordingly, there is no possibility that an award to Sharp will not result in the lowest cost to the government, regardless of how Sharp allocated its price among the CLINs. See Seaward Corp.-- Recon., B-237107.3, Oct. 24, 1990, 90-2 CPD ¶ 324. That the asbestos abatement work required by CLIN 0002 might be completed after all other tasks required by the IFB are paid for by the government,^{3/} does not alter our conclusion. Since there is no evidence that Sharp overstated the prices it submitted for the only other "big ticket" items (CLINs 0001 and 0008), there is no possibility of the agency making improper advance payments to Sharp. See, e.g., F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573 (bid should be rejected as materially unbalanced where it contained inflated prices for two CLINs for which bidder will receive progress payments early during performance of construction contract tantamount to improper advance payments).

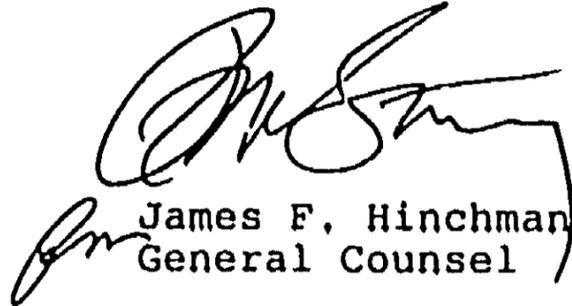
Although the protester styled its protest as one questioning the responsiveness of Sharp's allegedly unbalanced bid, the thrust of Star Brite's protest is that Sharp's bid, at least in connection with the price it submitted for CLIN 0002, is below cost--i.e., that it does not reflect Sharp's actual cost of performance.^{4/} The submission of a below-cost bid, however, is not improper; the government cannot withhold award merely because a responsive bid is below cost. International Servs. Corp., B-220006.2, Sept. 9, 1985, 85-2 CPD ¶ 282. To the extent that the protester argues that Sharp will not be able to perform the contract at its bid price, or that Sharp does not understand the work required, such allegations

^{3/} The IFB incorporated by reference FAR §§ 52.232-5, 52.232-27, which provide for progress payments for work completed based on invoices submitted by the contractor.

^{4/} Indeed, Mr. Smilios concludes his affidavit by stating that "there is absolutely no way Sharp can perform [CLIN 0002], nor the balance of the contract, at [its bid] price."

concern the firm's responsibility, which we will not review absent circumstances not present here. See 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)(5)); T.J. O'Brien Co., Inc., B-223680, Aug. 11, 1986, 86-2 CPD ¶ 177.

The protest is denied.



James F. Hinchman
General Counsel