



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Beldon Roofing & Remodeling Company

**File:** B-253199; B-253199.2

**Date:** August 18, 1993

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.  
Captain Gerald P. Kohns and Michael P. Finn, Esq., Department of the Army, for the agency.  
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. In a solicitation for a requirements contract, the agency reasonably rejected the apparent low bid as materially unbalanced where the bid included nominal prices for many line items and an enhanced price for the most important line item, and because of uncertainty concerning the reliability of the solicitation quantity estimates, there was a reasonable doubt that the unbalanced bid would actually represent the lowest price to the government.

2. Protest challenging propriety of a solicitation provision is untimely where the protester was aware prior to bid opening that the provision appeared to conflict with other solicitation provisions.

### DECISION

Beldon Roofing & Remodeling Company protests the rejection of its bid as unbalanced under invitation for bids (IFB) No. DAKF48-93-B-0016, issued by the Department of the Army. Beldon contends that its bid was neither mathematically nor materially unbalanced.

We dismiss the protests in part and deny them in part.

The Army issued the IFB to solicit bids for the labor, equipment, and materials for the reroofing of buildings with modified bitumen roofing membrane at Fort Hood, Texas. The IFB anticipated award of a requirements contract and

included estimated quantities for each contract line item (CLIN). Each bidder's overall price was to be determined by multiplying the bid prices by estimated quantities for each of the 24 CLINs in the IFB.

The 24 CLINs involved various tasks associated with removing or replacing existing materials and installing new ones. Thus, CLINs 0001 through 0004 concerned removal of material (such as gravel, shingles, insulation, and foam) from the existing roof. CLIN 0005, which the parties describe as the "core" of the work, covered installation of the new base sheet and roofing membrane. CLINs 0006 through 0008, which are of key interest in these protests, were defined in the IFB as three alternative insulation systems: CLINs 0006 and 0007 were identical, except that CLIN 0007 also included tapered material used for sloping, while CLIN 0006 did not; CLIN 0008 had neither tapered material nor certain other materials included in both CLIN 0006 and CLIN 0007. The quantities listed in the IFB indicated that the agency anticipated using the tapered material under CLIN 0007 with approximately the same frequency as the nontapered materials under CLIN 0006.<sup>1</sup> The remaining CLINs covered primarily peripheral items such as metal edging, flashing, and downspouts, as well as labor for necessary tasks not included in any other CLIN.

Of the 10 bids received, Beldon's bid of \$481,822 represented the lowest evaluated overall price. The contracting officer, however, determined that some of Beldon's prices were excessive and others were nominal. Of particular concern to the contracting officer were, on the one hand, Beldon's \$360 price entry for CLIN 0005 (where all other bids as well as the independent government estimate were below \$200, and for which the estimated quantity was 1,000) and, on the other hand, Beldon's 1-cent price entries for 12 of the other 23 CLINs. Because of the agency's uncertainty about whether actual usage would track the IFB estimates, the contracting officer concluded that there was a reasonable doubt that Beldon's bid would ultimately represent the lowest cost to the government. On that basis, the contracting officer rejected Beldon's bid as materially unbalanced, and award was made to Port Enterprises, Inc., whose overall evaluated bid price of \$535,816 was next low.

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<sup>1</sup>The comparison is an approximation because the tapered materials covered by CLIN 0007 involve volume measurements (board feet), while the flat materials provided under CLIN 0006 use area measurements (square feet).

Beldon contends that its bid was not unbalanced and will represent the lowest price under any reasonable scenario. While conceding that some of its line item prices were nominal, Beldon argues that the costs of those items were simply incorporated in the price for CLIN 0005, the installation of the base sheet and roofing membrane, which, as noted above, is the core of the work to be performed under the contract.

In addition, Beldon focuses on one item, CLIN 0007, for which its bid price was low (although not nominal). Beldon argues that the vast majority of the insulation systems actually installed will be performed under CLIN 0007, rather than the alternative systems covered by CLINs 0006 and 0008. Beldon bases its conclusion, which it states was the basis of its pricing structure, on the IFB's inclusion of a clause, ¶ 3.2.2 of Section 07112, which requires that, where an existing roof slope is less than 1/4 inch per foot, tapered insulation material (that is, material covered only by CLIN 0007) is to be used. Beldon contends that its performance under a predecessor contract at Fort Hood made it aware that "nearly every building at Ft. Hood that will require roofing projects under this Contract [has] no slope at all and, under the mandate of [¶ 3.2.2], the Contractor must" use CLIN 0007, rather than CLIN 0006 or CLIN 0008 for all those buildings. Beldon asserts that, due to the inclusion of ¶ 3.2.2 in the IFB, the agency will order large quantities under CLIN 0007, where Beldon bid the lowest price, thus ensuring that Beldon's overall price will actually represent the lowest overall cost to the government.

An examination of bid unbalancing has two aspects. Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30. 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, or whether the bid is based on nominal prices for some work and enhanced prices for other work. Id. Unbalancing typically arises either between base period prices and option period prices or, in a requirements-contract solicitation, between line items for different goods or services. Custom Env'tl. Serv., Inc., B-252538, July 7, 1993, 93-2 CPD ¶ \_\_\_\_.

If a bid is found to be mathematically unbalanced, it must be evaluated to determine the cost impact of the price skewing. Where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid would result in the lowest ultimate cost to the government, the bid is materially unbalanced and may not be accepted. Federal Acquisition Regulation (FAR) § 52.214-10; Westbrook Indus., supra.

For unbalancing in requirements contracts such as this one, the accuracy of the solicitation estimates is critical, since the unbalanced bid will become less advantageous than it appears only if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced ones. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126. Where an agency has reason to believe that its actual needs may deviate significantly during performance from the solicitation estimates, it may reasonably view a mathematically unbalanced bid as not clearly representing the lowest cost to the government and therefore as materially unbalanced. Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248.

Here, the contracting officer had a reasonable basis to find Beldon's bid mathematically unbalanced. The 1-cent bids for 12 of the 24 CLINs are indisputably below cost and nominal. Moreover, Beldon's price for CLIN 0005 was reasonably viewed as enhanced, since it is far higher than any other bidder's price as well as the government estimate. Indeed, Beldon's contention that its CLIN 0005 price includes the cost of other line items effectively concedes that its price for CLIN 0005 is enhanced.<sup>2</sup>

Concerning the determination that the bid is materially unbalanced, the key question, as explained above, is whether the IFB's estimated quantities were accurate. Here, the agency states that the estimates were based on the best available information. The agency notes, however, that actual orders under the contract will depend on the availability of funds and the roofing needs at Fort Hood, and that the latter could be affected by unpredictable factors such as storm damage or previously undetected deterioration in existing roofing.

Beldon generally defends the accuracy of the estimates, and rejects the agency's concern that factors such as storms could have a significant impact on the overall quantities ordered. However, Beldon's protest is in large measure predicated on its challenge to the estimates for the three alternative insulation systems covered by CLINs 0006, 0007, and 0008. As explained above, Beldon contends that the inclusion of ¶ 3.2.2 (requiring use of tapered insulation in buildings without the requisite sloping) will lead to orders

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<sup>2</sup>While Beldon contends that its enhanced price for CLIN 0005 is balanced out by the nominal prices for other CLINs, that contention essentially concedes mathematical unbalancing and goes instead to material unbalancing, *i.e.*, whether its pricing structure gives rise to reasonable doubt that the bid would represent the lowest cost to the government. The question of material unbalancing is discussed below.

under CLIN 0007, rather than CLIN 0006 or CLIN 0008, in "nearly every" case, due to what Beldon believes is the current lack of sloping in the buildings at Fort Hood.<sup>3</sup> Indeed, Beldon argues vehemently that its entire pricing structure was driven by the requirement under ¶ 3.2.2 for use of CLIN 0007 wherever the roof currently lacks the requisite slope. Beldon claims to have based its relatively low price for CLIN 0007 on economies of scale that it expected to achieve due to the large quantities which it anticipated would be ordered under that line item.<sup>4</sup>

The agency advises that it did not intend to include ¶ 3.2.2 in the IFB and that it does not expect to order tapered insulation for all roofing with less than the minimum slope identified in that provision. As noted earlier, the IFB quantity estimates for CLINs 0006 and 0007 are comparable (while the estimate for CLIN 0008 is substantially lower). Moreover, the independent government estimates for the overall prices indicate that the government expected to spend roughly the same amount under CLIN 0006 and CLIN 0007 (but significantly less under CLIN 0008). In the agency's view, the erroneous inclusion of ¶ 3.2.2 will not have a significant impact because, contrary to Beldon's view, the agency does not agree with Beldon's assertion that the great majority of work to be performed under the contract will involve roofing on buildings without the requisite slope.<sup>5</sup>

Beldon's argument that CLIN 0007 will be used far more than CLIN 0006 or CLIN 0008 constitutes an untimely challenge to the IFB estimates. Our Bid Protest Regulations require that protests based upon alleged improprieties in an invitation

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<sup>3</sup>During a telephone conference held in connection with this protest, Beldon advised that it believed that, due to the requirement of ¶ 3.2.2, actual orders under CLIN 0007 could well be six times higher than the IFB's estimated quantity.

<sup>4</sup>Similarly, Beldon contends that it would have bid a higher price for CLINs 0006 and 0008 (for which it actually bid 1 cent), if ¶ 3.2.2 had not been included in the IFB. Beldon apparently means that it would not have offered to perform that work at virtually no cost if it had expected the agency might actually order the substantial quantities listed in the estimates for CLINs 0006 and 0008.

<sup>5</sup>As explained above, for buildings which already have a roof slope of at least 1/4 inch per foot, ¶ 3.2.2 will not apply. The agency has indicated that it will work out any contradiction between the provisions of ¶ 3.2.2 and the agency's actual roofing needs for any particular building through negotiations with the contractor concerning individual delivery orders.

for bids, where those improprieties are apparent on the face of the solicitation, be filed prior to the time set for receipt of bids. 4 C.F.R. § 21.2(a)(1) (1993). Since Beldon formed its belief that CLIN 0007 would be used far more than the IFB estimated (and, indeed, claims to have based its entire pricing structure on that belief), any allegation by Beldon that the IFB is defective in that regard is now untimely. Accordingly, to the extent that Beldon now protests the IFB's estimated quantities for CLINs 0006, 0007, and 0008, that protest ground is dismissed.<sup>6</sup>

The remaining protest issue concerns the possibility that actual orders under the contract may deviate significantly from the IFB estimates. As noted above, the agency contends that, although the IFB estimates are as accurate a prediction as possible, actual usage may be significantly higher or lower than those estimates for particular line items.

The critical question in the determination of material unbalancing here is whether the actual mix of line items ordered will involve a mix different from that set forth in the IFB estimates, which could lead to the agency ordering proportionately more of CLIN 0005, for which Beldon bid an enhanced price, and proportionately less of the CLINs for which Beldon bid nominal prices. If the mix of those CLINs is subject to significant variation, that variation creates reasonable doubt that Beldon's bid will ultimately represent the overall lowest cost to the government.

The agency argues that the actual mix is unpredictable, because it will depend on which of the more than 4,700 eligible buildings at Fort Hood actually have roofing work performed under the contract. According to the agency, the roofing needs of each building will determine the precise quantities ordered under each CLIN for that building, and the overall mix will turn on the cumulative needs of the combination of buildings on which roofing work is eventually performed. For this reason, the agency contends that, while its IFB estimates are as accurate as possible, a substantial element of uncertainty is unavoidable.

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<sup>6</sup>For the same reason, we dismiss as untimely Beldon's contention that ¶ 3.2.2 should not have been included in the IFB. While it may be true that Beldon learned only during the course of the protest that the agency included this provision in the IFB by mistake, Beldon clearly believed that provision to be inconsistent with the IFB estimates for CLINs 0006, 0007, and 0008, yet did not timely protest the IFB's including both ¶ 3.2.2 and the inconsistent estimates.

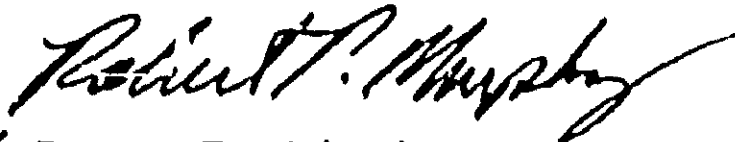
In particular, the agency is concerned that it can neither foresee nor control the actual ratio of underpriced work (for example, removing gravel and other materials from existing roofing, under CLINs 0001 through 0004) to the overpriced work under CLIN 0005 (installing a new base sheet and roofing membrane). Accordingly, the agency believes that it would be assuming an unacceptable risk if it were to award a contract based on a pricing structure which, while it might prove a bargain if the mix of work turned out precisely as estimated in the IFB, could become a costly burden to the government (and a windfall to the contractor) if actual usage varied from those estimates. The agency notes that, while Beldon's bid would be low under the IFB estimates, the bid of the awardee, Port Enterprises, would be low if the mix of quantities ordered under the various CLINs turned out to track the mixes actually ordered in any of the past 3 years.

Beldon does not assert that there is any fixed proportion between CLIN 0005 and other CLINs. It thus does not claim, for example, that 100 square feet of foam roofing removal, under CLIN 0004, must always be ordered whenever the agency orders 100 square feet of roofing membrane under CLIN 0005. Instead, other than repeating its untimely argument that CLIN 0007 will be used for the substantial majority of the work, the protester simply repeats that, in light of its experience on a predecessor contract at Fort Hood, there can be no reasonable doubt that its bid will represent the lowest cost to the government.

We find that the agency had a reasonable basis for doubting that Beldon's mathematically unbalanced bid would ultimately represent the lowest cost to the agency. The protester's arguments to the contrary are based on its own quite limited experience at Fort Hood, during which it apparently worked on the roofing of some 60 buildings at a facility where more than 4,700 buildings are candidates for work under the IFB. The protester offers no rebuttal to the agency's contention that not all the buildings on Fort Hood will require precisely the same roofing work and that the mix of CLINs actually ordered under the contract may therefore be affected by the particular buildings on which roofing work is ultimately performed. Because actual orders could vary significantly from the IFB estimates, the agency properly

rejected Beldon's mathematically unbalanced bid on the basis of a reasonable doubt that the bid would ultimately prove to represent the lowest cost to the government.

The protests are dismissed in part and denied in part.

  
for James F. Hinchman  
General Counsel