Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: D & L Construction Co., Inc.

File: B-279132

Date: May 11, 1998

Larry L. Smith for the protester.
Stephen Marvin, for A.C.E. General Contractors, Inc., an intervenor.
Michael F. Kiely, Esq., Department of Agriculture, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency properly awarded a fixed-price construction contract to the awardee on the basis of its lowest priced bid, even though the bid contained an alleged price discrepancy for an additive item, where the contract was awarded for the basic construction work only and does not include the additive item.

2. Protest that the agency improperly accepted the awardee's bid despite the fact that the bid contained alleged minor irregularities regarding the title of the person who signed the bid and the date that the bid was signed is denied, where the title and date were clearly set forth in several other parts of the bid and the alleged irregularities do not affect price, quantity, quality, or delivery of the required construction services.

3. Protest that the awardee's bid was nonresponsive to the invitation for bids' (IFB) requirement that toilets be supplied from two manufacturers named in the specifications is denied, where the contracting agency reasonably interpreted the IFB as allowing installation of toilets manufactured by other than the named firms and the awardee's bid took no exception to the IFB's requirements.

4. Bid is not materially unbalanced where there is no evidence that the awardee's bid will not result in the lowest cost to the government.

DECISION

D & L Construction Co., Inc., protests the award of a construction contract to A.C.E. General Contractors, Inc., by the Forest Service, United States Department of Agriculture, pursuant to invitation for bids (IFB) No. R10-98-01. The protester alleges that A.C.E.'s bid was nonresponsive and unbalanced.

The protest is denied.

Issued on October 30, 1997, the IFB solicited bids for reconstruction and expansion of the Quartz Creek Campground, in the Chugach National Forest, in Alaska. The IFB required bids to include a fixed price for the basic work and for each of three additive items of work. Among other things, the contract would require construction of new roads and campsites; extensive landscaping; demolition of the old fee collection station; construction of parking areas; removal and refurbishing of campfire grates; demolition, removal, and reconstruction of flush-toilet and vault-toilet buildings; and installation of water and electrical lines to the flush-toilet buildings.

Eight bids were received and opened on January 6, 1998. A.C.E.'s bid was the lowest priced bid for basic work alone ($1,066,007) and for the basic work and the three additive items combined ($1,153,507); D & L's bid was the second-lowest priced bid for basic work alone ($1,092,597) and for the basic work plus the three additive items combined ($1,176,670).[1] After bid opening, the Forest Service decided to award a contract for the basic work only. On January 22, after determining that A.C.E. was responsible and that A.C.E.'s total price was reasonable, the contracting officer awarded A.C.E. the contract. D & L filed this protest shortly thereafter.

The protester alleges that A.C.E.'s bid was nonresponsive because it included two different prices for additive item 1 (construction of a pavilion). D & L points out that A.C.E. inserted a price of $20,000 for additive item 1 in the price schedule of its bid, but inserted a price of $27,500 for additive item 1 in standard form (SF) 1442--the "Solicitation, Offer and Award" portion of the bid--thus, creating a $7,500 discrepancy.[2] D & L contends that A.C.E.'s bid should not have been accepted because its price for additive item 1 was ambiguous.

From a review of A.C.E.'s bid, it appears that A.C.E. made a mistake when it carried its prices over from the bid schedule to the appropriate block of SF 1442. A.C.E. inserted prices in its bid schedule as follows:

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[1]All prices have been rounded to the nearest dollar in this decision.

[2]These prices were included in A.C.E.'s original bid. Prior to bid opening, A.C.E. sent a letter to the agency adding $60,000 to the original price for additive item 1. This upward revision had no effect on the amount of the apparent discrepancy between the prices inserted by A.C.E. for additive item 1 in its bid schedule and the SF 1442.

Total Bid - Base Construction Item	$1,066,007
Additive Item 1 - Pavilion	$ 20,000
Additive Item 2 - Electricity	$ 5,000
Additive Item 3 - Fire Pit Ring	$ 2,500

However, when A.C.E. inserted its prices into the "amounts" block of SF 1442, A.C.E. entered prices as follows:

Base Bid	$1,066,007
Additive 1	$ 27,500
Total	$1,093,507

Thus, it appears that A.C.E. incorrectly entered on the SF 1442 the total price for all three additive items ($20,000 + $5,000 + $2,500 = $ 27,500) and mislabeled them as the price for additive item 1 alone.

Under an IFB that includes additive work items, bids must be evaluated only on the basis of the work actually awarded. NJS Dev. Corp., B-230871, July 18, 1988, 88-2 CPD ¶ 62 at 2. The Forest Service decided, because of funding limitations (prior to bid opening, the agency reserved $1.1 million for the project), to award a contract for the basic work only. As A.C.E.'s lowest priced bid was $26,590 less than D & L's next-low bid for the basic work alone, the Forest Service awarded the contract to A.C.E. Because the agency decided not to include additive item 1 in the contract, the alleged $7,500 discrepancy in A.C.E.'s bid for additive item 1 was of no consequence and did not require rejection of the bid.[3] Id.

The protester alleges that A.C.E.'s bid was nonresponsive because the person who signed the SF 1442 did not include her title as an officer of A.C.E. The protester also alleges that the bid was nonresponsive because it appears that, when A.C.E.'s president signed the bid schedule, she first wrote in the date by hand as "1/6/97" and then corrected the year to 1998 by making the last digit into an 8, without initialing the correction. These protest allegations are without merit.

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[3]Generally, a bid must be rejected as nonresponsive if it is ambiguous regarding the price the government must pay upon acceptance of the bid. Murray Serv. Co. t/a EMD Mechancial Specialists, B-274866, Dec. 9, 1996, 96-2 CPD ¶ 220 at 2-3. However, a bid which is ambiguous as to price need not be rejected if it is low under all reasonable interpretations. Id. Our review of A.C.E.'s bid reveals that A.C.E.'s bid would still be low even under the interpretation that is least favorable to A.C.E.

A.C.E.'s president signed the SF 1442 included in A.C.E.'s bid.[4] Even though A.C.E.'s president did not indicate her position within the firm on the SF 1442, she did sign and indicate that she was the firm's president in several other places in the bid (i.e., the bid bond, the letter revising upward the price for additive item 1, and the bid schedule). Thus, her position within A.C.E. was clear from the other parts of the bid. Moreover, even though D & L alleges that A.C.E.'s president originally wrote the numerals "97" and then wrote an "8" over the last digit when writing the date of her signature on the bid schedule, the date as ultimately written is the actual date of the bid opening (i.e., January 6, 1998) and is the same date that appears in the SF 1442 and the letter revising upward the price for additive item 1. The alleged irregularities provide no reason for sustaining the protest because the signatory's position and the bid date are clearly set forth in several different parts of the bid; the bid documents are internally consistent; and the alleged irregularities do not affect price, quantity, quality, or delivery. Federal Acquisition Regulation § 14.405; see R.R.Donnelley/Nimbus Joint Venture, B-261301, Aug. 3, 1995, 95-2 CPD ¶ 56 at 4 n.3; see also C.B.C. Enters., Inc., B-246235, Oct. 31, 1991, 91-2 CPD ¶ 416 at 2-3.

The protester next alleges that A.C.E.'s bid is nonresponsive to the IFB's requirements concerning design and construction of flush-toilet and vault-toilet buildings. D & L interprets the IFB as requiring that the contractor furnish toilets that are constructed by one of two manufacturers of pre-cast concrete toilets that were named in the specifications. D & L believes that A.C.E. may intend to construct the toilets itself and, therefore, contends that A.C.E.'s bid is nonresponsive. The agency responds that it is clear from the plain language of the specifications that the contractor is not required to obtain the toilets from any particular manufacturer(s) and, therefore, A.C.E. properly can meet the IFB's requirements by manufacturing the toilets itself.

Where a dispute exists as to the meaning of the IFB's terms, our Office resolves the matter by reading the IFB as a whole and in a manner that gives effect to all of the IFB's provisions. AABLE Tank Servs., B-274867, Nov. 12, 1996, 96-2 CPD ¶ 181 at 2. To be reasonable, an interpretation of IFB language must be consistent with the IFB when read as a whole. Id. After reviewing the specifications, we conclude that the agency's interpretation that bids were not required to be based upon supplying toilets manufactured by one of the two firms listed in the specifications is reasonable.

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[4]D & L has not challenged the authority of A.C.E.'s president to bind A.C.E. to the contract awarded.

The IFB required the contractor to furnish and install two concrete vault toilets and three concrete flush toilets.[5] The IFB contained detailed specifications and design drawings for both types of toilets. The specifications stated that both types of toilets must be constructed by the same manufacturer. While the specifications listed two companies as experienced suppliers of precast concrete vault toilets, we think it is clear that the products of other manufacturers can also be supplied, especially since the same provision of the specification that lists the two named manufacturers also states that precast concrete manufacturers are available in most parts of the country. Nowhere do the specifications or drawings state that the only acceptable products are those manufactured by the two listed firms.

Since A.C.E.'s bid took no exception to the IFB's requirements, the bid was responsive. The test for responsiveness is whether a bid as submitted represents an unequivocal offer to provide the requested supplies or services at a fixed price. Mobility Sys. and Equip. Co., B-243332, Apr. 25, 1991, 91-1 CPD ¶ 412 at 3. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accord with the terms of the IFB, the bid is responsive. Id. A.C.E.'s bid simply included bid prices, as required in the bid schedule, for each line item of work related to design, construction, and installation of the two types of toilets required under the IFB's statement of work, specifications, and drawings. Thus, A.C.E.'s bid was an unequivocal offer to perform the exact work called for in the IFB and, therefore, was acceptable. Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153 at 4. Whether A.C.E. will meet its commitment to fulfill the IFB's requirements is a matter of contract administration not for review by our Office. Id.

The protester next contends that the Forest Service should have rejected A.C.E.'s bid as unbalanced because A.C.E.'s prices for approximately 20 of the 63 line items of work required for the basic contract were either overstated or understated when compared to the agency's estimates of what those work items should cost the government. As examples, D & L points out that A.C.E.'s line item price for designing the flush toilets is more than the agency's estimate, while A.C.E.'s line item prices for constructing flush toilets and for furnishing/installing the vault toilets are less than the agency's estimates. D & L also states that A.C.E.'s price for furnishing/installing the vault toilets is less than the amount quoted to D & L for precast concrete vault toilets by one of the suppliers named in the specifications.

The agency responds that, when it examined A.C.E.'s prices, it observed that some of the line item prices were "on the high side" and some were "on the low side," but that overall the bid was close to the government estimate and the next-low bid. The agency also reports that initially its engineer was concerned about the fact that

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[5]A vault toilet essentially is a large outhouse with no flushing system or running water.

A.C.E.'s line item prices for the two types of toilets were significantly less than the agency's estimates, and that the contracting officer discussed A.C.E.'s pricing structure with an A.C.E. representative who indicated that, even though some of A.C.E.'s prices were "tight," overall A.C.E. was "comfortable" with its bid and intended to meet the IFB requirements.[6] The contracting officer states that he checked with A.C.E.'s references and determined that A.C.E. was a very reliable contractor with an excellent past performance record. The contracting officer, therefore, concluded that "there is no reasonable doubt that award to A.C.E. will result in the lowest overall cost."

Before a bid can be rejected as unbalanced it must be shown to be both mathematically and materially unbalanced. A bid is mathematically unbalanced if it is based on nominal prices for some of the items and overstated prices for other items. Where there is reasonable doubt that the acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. Nomura Enter., Inc., B-271215, May 24, 1996, 96-1 CPD ¶ 253 at 3.

The record does not show that A.C.E.'s bid contained nominal prices for any of the line items, and D & L has provided no evidence that A.C.E.'s bid will not result in the government obtaining the lowest ultimate cost. D & L has not challenged the accuracy of the IFB's estimated quantities or asserted that the agency will deviate from the quantity estimates in ordering work under the contract. Id. Even if A.C.E.'s line item prices were somewhat higher or lower than the agency's estimates, the agency expects A.C.E. to complete the entire project encompassed by the contract for the basic work and A.C.E.'s total price for the basic work was the lowest. Even if some of A.C.E.'s prices were below cost (for example, if A.C.E. decides to obtain pre-cast concrete vault toilets from one of the named suppliers and the supplier's price turns out to be more than A.C.E.'s bid price), that would provide no reason for rejecting A.C.E.'s bid because there is nothing illegal in accepting a below-cost bid. Hellenic Technodomiki, S.A., B-265931, Jan. 18, 1996, 96-1 CPD ¶ 91 at 3-4. We also note that A.C.E.'s total fixed price ($1,066,007) is only about 0.6 percent more than the agency estimate ($1,059,227) and is only 2.4 percent less than D & L's price ($1,092,597). A.C.E.'s overall low price, therefore, provides no reason for questioning the Forest Service's determinations

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[6]D & L alleges that the contracting officer improperly engaged in discussions with A.C.E. after the bids were opened. The contracting officer responds that he did not hold discussions with A.C.E. but instead communicated with A.C.E. concerning responsibility matters, concern about possible mistakes in some of A.C.E.'s low line item prices, and to clarify certain aspects of the bid. As the record shows that the Forest Service accepted A.C.E.'s bid as submitted by A.C.E. on the bid opening date and contains no evidence that A.C.E. was allowed to revise its bid in any manner after bid opening, this allegation provides no basis for overturning the award.

that A.C.E.'s price was reasonable or that A.C.E. was responsible. See Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339 at 10-11. As A.C.E.'s bid will result in the lowest cost to the government, the agency properly accepted the bid.

The protest is denied.

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of the United States