

# The Skillful Unbalancing Act

*And 23 CFR*

*A Case Study*

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# Overview:

- Contract parameters
- Overview of unbalanced bid appeal
- FHWA determination using 23 CFR
- TEA perspective

# Contract Profile

- Project: BENNINGTON - HOOSICK DPI 0146(1)C/3
- 2.9 Miles of new limited access highway
- Located in SW corner of VT beginning on NY/VT stateline
- Let on Feb. 1, 2002 w/est. compl. of Sept. 3, 2004

# Letting Data

VENDOR	TOTAL AMOUNT	PCT OVER LOW BID	PCT OVER ESTIMATE
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K.C. CORP.	\$12,859,544.66	0.0	-41.6
JAM, INC.	\$13,533,558.86	5.2	-38.5
GRC & SON, INC.	\$13,990,962.76	8.8	-36.4
GI CONSTRUCTION CO., INC.	\$14,125,331.00	9.8	-35.8
RBG CONSTRUCTION, INC.	\$14,513,817.16	12.9	-34.1
PTCA CONSTRUCTION CO.	\$16,247,902.27	26.3	-26.2
A.S., INC.	\$16,393,000.45	27.5	-25.5
*** ESTIMATE ***	\$22,014,988.09	71.2	0.0

# Post-Letting Appeal

- Second bidder(JAM Inc.) files appeal against K.C. Corp.
- Contends bid is unbalanced due to 4 items;

201.10      Clearing and Grubbing

203.30      Earth Borrow

203.31      Sand Borrow

641.15      Portable Changeable  
Message Sign

# Bid Data: Clearing & Grubbing

QTY	VENDOR	UNIT PRICE	% Over Low	Wtd. % Over Low
1.00	**ESTIMATE**	\$464,000.00	-63.6	-6.3
.	K.C. CORP.	\$1,273,705.00	0.0	0.0
.	JAM, INC.	\$740,000.00	-41.9	-4.2
.	GRC & SON, INC.	\$1,006,000.00	-21.0	-2.1
.	GI CONST. CO., INC.	\$500,000.00	-60.7	-6.0
.	RBG CONST., INC.	\$462,131.23	-63.7	-6.3
.	PTCA CONST. CO.	\$700,000.00	-45.0	-4.5
.	A.S., INC.	\$914,900.00	-28.2	-2.8

# Bid Data: Earth Borrow

QTY	VENDOR	UNIT PRICE	% Over Low	Wtd. % Over Low
86,979	**ESTIMATE**	\$4.21	15.8	0.4
.	K.C. CORP.	\$3.63	0.0	0.0
.	JAM, INC.	\$2.48	-31.6	-0.8
.	GRC & SON, INC.	\$2.52	-30.5	-0.8
.	GI CONST. CO., INC.	\$3.25	-10.5	-0.3
.	RBG CONST., INC.	\$2.68	-26.1	-0.6
.	PTCA CONST. CO.	\$5.73	57.9	1.4
.	A.S., INC.	\$3.82	5.3	0.1

# Bid Data: Sand Borrow

QTY	VENDOR	UNIT PRICE	% Over Low	Wtd. % Over Low
75,207	**ESTIMATE**	\$10.51	243.8	4.4
.	K.C. CORP.	\$3.06	0.0	0.0
.	JAM, INC.	\$7.65	150.0	2.7
.	GRC & SON, INC.	\$9.79	220.0	3.9
.	GI CONST. CO., INC.	\$9.17	200.0	3.6
.	RBG CONST., INC.	\$12.62	312.5	5.6
.	PTCA CONST. CO.	\$12.62	312.5	5.6
.	A.S., INC.	\$9.56	212.5	3.8

# Bid Data: Portable Changeable Message Sign

QTY	VENDOR	UNIT PRICE	% Over Low	Wtd. % Over Low
6.00	**ESTIMATE**	\$36,000.00	3.6E6	1.7
.	K.C. CORP.	\$1.00	0.0	0.0
.	JAM, INC.	\$12,000.00	1.2E6	0.6
.	GRC & SON, INC.	\$18,400.00	1.84E6	0.9
.	GI CONST. CO., INC.	\$1,000.00	99900	0.1
.	RBG CONST., INC.	\$14,345.96	1.43E6	0.7
.	PTCA CONST. CO.	\$12,600.00	1.26E6	0.6
.	A.S., INC.	\$1,000.00	99900	0.1

# Bid Analysis/Review

- Consultant reviewed quantities and compared unit prices to other contracts
- Clearing and Grubbing: Front-end Loaded
- Earth Borrow: Not analyzed
- Sand Borrow: New source
- Message Signs: Already own and not all will be needed

# Agency Stance

- Bid is mathematically unbalanced
- Acceptable due to the fact that the low bidder's bid will still result in the lowest overall cost to the state
- Overall difference between Clearing and Grubbing still makes K.C. Corp. low by \$140,000

# Contractor's Stance

- Will save \$48,000 on message sign(s)
- Quantity is overstated for Sand Borrow and will save \$84,000
- Quantity is understated for Earth Borrow and will result in \$74,500
- Total savings of \$214,500 if awarded to JAM

# 23 CFR Sec. 635.114

## Award of contract and concurrence in award

- Lowest responsive bid
- Concurrence by Feds after review
- Apparent unbalancing will be thoroughly analyzed
- Mathematically unbalanced bids may be awarded with justification
- With Fed approval award may be made to the next lowest bidder

# Overall Assessment

- Second bidder (JAM) simply a sore loser
- Low bid was not materially unbalanced
- Award to low bidder justified even though mathematically unbalanced

# TEA Assessment

Agree/Disagree?

Thoughts/Comments