The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Professional Waste Systems, Inc.; Tri-State Services of Texas

File: B-228934, B-228934.3

Date: November 10, 1987

DIGEST

The apparent low bids for a contract contemplating award for a 1-year base period and four 1-year options are mathematically unbalanced where there are price differentials of 107 percent and 51 percent, respectively, between the base year bids and the fourth option year bids and the price differential between bid performance periods is attributable primarily to the bidders' discretionary decision to complete paying for equipment in the early years of contract performance. Since the agency has a reasonable doubt that the acceptance of those bids which do not become low until the fourth and fifth years of the contract ultimately would result in the lowest overall cost to the government, the bids properly are rejected as materially unbalanced.

DECISION

Professional Waste Systems, Inc. (PWS), and Tri-State Services of Texas (TSS) protest the rejection of their bids as materially unbalanced under invitation for bids (IFB) No. DABT10-87-B-0065, issued as a 100 percent small business set-aside by Fort Benning, Georgia. The procurement is for the acquisition of all labor, supervision, facilities, tools, materials, equipment, containers and vehicles for collection and transportation of refuse at Fort Benning and the disposal of refuse in the Fort Benning landfill, including operation and maintenance of the landfill.

We deny the protests.

The IFB provided for award of a 1-year base period covering fiscal year 1988 with four 1-year option periods. The IFB incorporated by reference the Federal Acquisition Regulation (FAR) clause found at 48 C.F.R. § 52.217-5 (1986), entitled Evaluation of Options, which advised bidders that the government would evaluate bids on the total price for the base requirement and all options and further advised that the government could reject an offer as nonresponsive if it were materially unbalanced as to prices for the basic requirement and the option quantities.

On July 30, 1987, the procuring agency received and recorded 10 bids. The first four bids were as follows (rounded):

	Base Year	OP YR 1	OP YR 2	OP YR 3	OP YR 4	TOTAL
PWS	996,744	711,336	693,324	474,936	480,936	3,357,276
MMI*	1,010,040	1,010,040	497,652	497,652	497,652	3,513,036
TSS	886,673	840,408	828,540	642,810	587,136	3,785,567
MDI*	780,000	780,000	780,000	780,000	780,000	3,900,000

*MMI - Midland Maintenance Inc.
MDI - Mark Dunning Industries, Inc.

On August 4, the contracting officer wrote to PWS, MMI and TSS concerning the significant variance between their bid prices for the base year and their prices for the option years. The contracting officer asked each bidder to examine its bid for mistakes and possible unbalancing. In the event that bidders chose to confirm their bid, the contracting officer asked for an explanation of the apparent disparity in prices for the base contract period and option years, as well as worksheets and other supporting documents. All three contractors verified their bid prices.

PWS submitted cost data indicating that costs for the basic and first two option years were increased by loan payments of $425,148 in the base year and $169,464 in each of the first and second option years. TSS explained that its base year price included purchase of additional equipment and that other equipment would be obtained by a 3-year lease-purchase plan, costs of which would not be incurred in the fourth or fifth year of contract performance. TSS advises that a 3-year plan saved $128,000 over a 5-year plan.

On August 20, the contracting officer advised the three low bidders that he was rejecting their bids as materially unbalanced and, consequently, nonresponsive. All three bidders protested the rejection of their bids; MMI withdrew its protest apparently in response to a challenge to its small business size status. Award was made to MDI.

The contracting officer's decision to reject the bids of PWS and TSS as materially unbalanced is without legal objection if (1) the bids are in fact mathematically unbalanced and (2) the contracting officer had a reasonable doubt that award to either

PWS or TSS would result in the lowest overall cost to the government. Howell Construction, Inc., B-225766, Apr. 30, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ 455.

An examination of bid unbalancing has two aspects. First, the bid must be evaluated mathematically to determine whether each item carries its share of the cost of the work specified for that item as well as overhead and profit. If the bid is based on nominal prices for some of the work and enhanced prices for other work, it is mathematically unbalanced. The second part of the test is to evaluate the bid to determine whether award to a bidder that has submitted a mathematically unbalanced bid will result in the lowest overall cost to the government. If award to a party that submits a mathematically unbalanced bid will not result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. Landscape Builders Contractors, B-225808.3, May 21, 1987, 87-1 CPD ¶ 533.

With regard to service contracts that involve evaluation of a base period and option periods, as in the instant case, we have held that a bid will be questioned where in terms of the pricing structure evident among the base and option periods it is neither internally consistent nor comparable to the other bids received. We have recognized that a large price differential between base and option periods, or between one optional period and another, may be prima facie evidence of mathematical unbalancing. See Howell Construction, Inc., B-225766, supra.

The record shows that PWS' base year bid is 107 percent higher than its bid for the fourth option year; TSS' base year bid is 51 percent higher than its bid for the fourth option year. PWS' base year bid is higher than its third and fourth year option year bids added together; half of its total bid appears in the base and first option year. While five bidders including PWS and TSS submitted front-loaded bids, five others offered level pricing for the base year as well as the options.

Further, as far as PWS' bid is concerned, we have held much smaller differentials to indicate by their very magnitude that the bid is mathematically unbalanced. See Howell Construction, Inc., B-225766, supra, (85 percent) and USA Pro Company, Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159 (90 percent).

Both PWS and TSS proffer explanations related to contract financing to explain their bidding patterns. TSS has acknowledged that it could have negotiated a 5-year lease purchase plan but that the 3-year plan saved $120,000, almost precisely the difference between TSS' total bid price and that of MDI. Both bidder's explanations indicate that the pricing differential relates to financing considerations and not to differences in work or the cost of work. Both explanations are based on

the bidders' business judgments, but it is not our practice to look behind a bid to ascertain the business judgments that went into its preparation. Crown Laundry and Dry Cleaners, Inc., B-208795.2, B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438. Based on their pricing of the base year and options years, we conclude that the PWS and TSS bids are mathematically unbalanced.

As noted above, a bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the government. Howell Construction, Inc., B-225766, supra. For a long time, our material unbalancing analysis was limited to determining whether the government reasonably expected to exercise the options. See, for example, Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542. If the exercise was reasonably anticipated, we concluded that the bid was not materially unbalanced. However, in cases involving extreme front-loading and where the mathematically unbalanced bid does not become low until the end of the final option year, we have indicated that, despite the initial intent to exercise the options, intervening events could cause the contract not to run its full term, resulting, therefore, in inordinately high cost to the government and a windfall to the bidder. Under this type of factual situation, we have held that there was a reasonable doubt whether the mathematically unbalanced bid would ultimately provide the lowest cost to the government. Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656.

The record shows that the TSS bid does not become low when compared to the bid of the awardee, MDI, until the last option years and the PWS bid does not become low until the fourth year. On these facts, therefore, we conclude that the Army had sufficient reasonable doubt that acceptance of the PWS and TSS bids would actually provide the lowest cost to the government. See Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD ¶ 632.

In the instant case, the contracting officer points out several possibilities that could preclude option exercise. The agency indicates that the existing landfill may be filled within the next year and require use of another landfill. Also, the Army points our that troop transfers may cause a decrease in refuse volume. As PWS points out, the contracting officer is required to make a determination prior to evaluating options and prior to using the FAR, § 52.217-5 clause, that there is a "reasonable likelihood" that options will be exercised and that these factors were considered by the Army and not seen as problems when issuing the IFB with the Evaluation of Options clause. However, even if we assume, as PWS and TSS contend, that the Army at the present time expects to exercise the options under

the contemplated contract, that still does not obviate the correctness of the determination made here to reject PWS and TSS' bid as materially unbalanced. See Howell Construction, Inc., B-225766, supra.

We deny the protests.

for Seymour Efros
James F. Hinchman
General Counsel