



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-Cor Industries, Inc.

File: B-248160; B-240161

Date: July 27, 1992

J.R. Clary for the protester,
Gerard F. Doyle, Esq., Doyle & Bachman, for System
Resources, Inc., an interested party.
Jeffrey I. Kessler, Esq., and Larry D. Manecke, Esq.,
Department of the Army, for the agency.
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Awardee's offers for maintenance services submitted under two solicitations are not materially unbalanced where protester fails to show that reasonable doubt exists that awards to the firm will result in the lowest ultimate cost to the government.

DECISION

Tri-Cor Industries, Inc. protests the award of two contracts to System Resources, Inc. (SRI) under request for proposals (RFP) Nos. DAAA08-91-R-0035 (RFP No. 0035) and DAAA08-91-R-0037 (RFP No. 0037), issued by the Department of the Army, Rock Island Arsenal for monthly maintenance of government computer equipment. Tri-Cor alleges that SRI's offers should have been rejected as materially unbalanced. We have consolidated the protests as they involve the same issue.¹

We deny the protests.

Each RFP requested monthly prices for a base and option periods totaling 5 years, the anticipated system life of the equipment. RFP No. 0035 contained 16 separate line items,

¹In its initial protests, Tri-Cor raised several other issues. In its reports, the agency answered each of the protester's arguments concerning those issues. Tri-Cor did not respond to the agency's rebuttal in its comments. Therefore, we deem those issues to be abandoned and we will not address them. Vanquard Research, Inc., B-242633; B-242633.2, May 30, 1991, 91-1 CPD ¶ 517.

including 3 option items; RFP No. 0037 contained 42 separate line items. The RFPs each provided that offerors must submit prices for all items in the solicitation and that all the items would be awarded on an all-or-none basis. The RFPs stated that offers would be evaluated for purposes of award by adding the total prices of all option periods to the total price for the base period.

The agency received six offers in response to RFP No. 0035. Four of those firms, including the protester, submitted proposals which were determined to be within the competitive range. The agency requested and received best and final offers (BAFO) from those offerors. The agency reports that the cumulative prices on an annual basis for each offeror were as follows:

	SRI	Tri-Cor	XXXX	XXXX
Base	\$586,614	\$510,780	\$603,897	\$836,607
Yr 2	\$651,096	\$510,780	\$622,020	\$826,861
Yr 3	\$434,064	\$510,780	\$640,684	\$821,555
Yr 4	\$171,426	\$510,780	\$659,901	\$816,832
Yr 5	\$148,200	\$510,780	\$679,901	\$803,744
Total	\$1,991,400	\$2,553,900	\$3,206,197	\$4,105,601

Based on SRI's low overall price over the 5-year system life, the agency awarded that firm the contract.

Turning to RFP No. 0037, the agency received four offers. After eliminating one firm from the competitive range, the agency requested and received BAFOs from the three remaining firms. The agency reports that the cumulative prices on an annual basis for each offeror were as follows:

	SRI	Tri-Cor	XXXX
Base	\$2,269,061	\$2,241,240	\$2,514,977
Yr 2	\$2,447,458	\$2,241,240	\$2,591,456
Yr 3	\$1,974,730	\$2,241,240	\$2,669,202
Yr 4	\$1,804,506	\$2,241,240	\$2,749,265
Yr 5	\$1,348,664	\$2,241,240	\$1,628,641
Total	\$9,844,419	\$11,206,200	\$13,356,644

Again, based on SRI's low price for the evaluated total for the life of the contract, the agency awarded that firm the contract. After filing an unsuccessful protest with the agency contesting both award decisions, Tri-Cor filed its current protests with our Office on March 31.

The protester contends that both SRI offers are materially unbalanced. It argues that the offers are improperly front-loaded over the 5-year contract life as the offers contain prices which are higher in the base year and the early option periods of the contract than the prices for the same services in the later option years.² Tri-Cor also points out that accepting SRI's offers creates a probability that the government will not actually obtain the services at the lowest cost since SRI's offers are low only if the agency exercises most of the contract options. In this regard, the protester asserts that Rock Island Armament, Munitions, and Chemical Command is scheduled to be moved to Redstone Arsenal, Alabama, creating doubt that the options will, in fact, be exercised.

The concept of material unbalancing may apply in negotiated procurements where, as here, price constitutes a primary basis for source selection. Unbalanced pricing has two aspects. First, the offer 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 offer 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 offer to determine whether award to an offeror that has submitted a mathematically unbalanced offer will result in the lowest overall cost to the government. If award to a party that submits a mathematically unbalanced offer will not result in the lowest cost to the government, the offer is materially unbalanced and can not be accepted. See Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30. With regard to service contracts that involve

²The protester also argues for the first time in its comments filed with our Office on May 20, 1992, that SRI improperly structured its offer by increasing its prices for the three option line items in the later months of the base year of the contract under RFP No. 0035. SRI broke its base year prices into two segments, one for months 1-6 and another for months 7-12. The protester asserts that SRI priced its items this way because SRI believed that it was unlikely that the agency would exercise the options for those line items in the earlier months of the year. We agree with the agency's argument that this protest allegation is untimely since it was not filed within 10 days of when Tri-Cor learned of it. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992). The protester received SRI's pricing tables, which contained SRI's prices for the option line items, on April 14. Its objection to this aspect of SRI's pricing, raised for the first time more than a month later in its May 20 comments, is untimely and will not be considered.

evaluation of a base period and option periods, a large price differential between the base and option periods, or between one option period and another, is evidence of mathematical unbalancing. Id.

SRI'S OFFER UNDER RFP NO. 0035

SRI's highest annual price is in the second year (first option year) of the contract. This price is 50 percent higher than its third year price and 340 percent higher than its price for the fifth year, despite the fact that the level of services remains constant. SRI's explanation for its pricing methodology--that it sought to recover its start-up costs in the early part of the contract--also supports the protester's position that SRI submitted an unbalanced offer since such costs are generally expected to be apportioned over the evaluated contract period, including the option periods. Id. It therefore appears that the offer is mathematically unbalanced.

Since, however, we find that there is not a reasonable doubt that the award to SRI will actually result in the lowest cost to the government, we cannot conclude that the awardee's offer was materially unbalanced. Therefore, we have no legal basis upon which to interfere with the award.

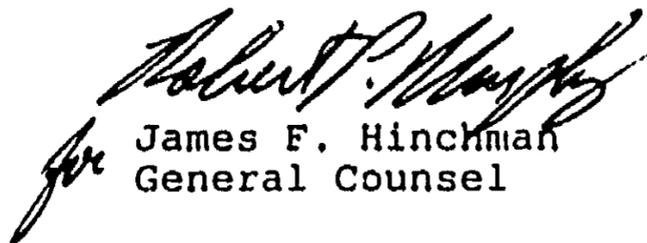
Although Tri-Cor speculates that the contract may not run its full term because of future relocation of the Command, the agency states that the decision to exercise options under this contract will not be affected because the equipment to be serviced will not be moved. In this regard, the agency has submitted a memorandum from the Director, U.S. Army Information Systems Command, which explains that the options were included in the contract "to cover the various types of equipment that will be needed in regards to the new missions being transferred to the Rock Island site." The contracting officer also confirms that there is "a high degree of probability" that the contract options will be exercised. In addition, although SRI's prices substantially decrease in the later years of the contract, this is not a case in which the agency would have to exercise all of the options in order for the offer to result in the lowest overall cost to the government. DGS Contract Servs., Inc., B-245400, Dec. 30, 1991, 92-1 CPD ¶ 16; Aquasis Servs., Inc., B-228044, Nov. 2, 1987, 87-2 CPD ¶ 426. Specifically, the record shows that SRI's price becomes low prior to the completion of the fourth contract year (41st month). Since the record shows that the agency intends to exercise the options to permit performance under the contract for all 60 months, it appears that SRI's offer will ultimately provide the lowest cost to the government. Western States Mgmt. Servs., Inc., B-235956.2, Dec. 7, 1989, 89-2 CPD ¶ 524.

SRI'S OFFER UNDER RFP NO. 0037

With respect to SRI's pricing under RFP No. 0037, the pricing disparity among the contract period prices is less than under RFP No. 0035. SRI's highest annual price is in the second year (first option year). This price is 23 percent higher than its third year price and 81 percent higher than the lowest annual (year five) price. In addition, even SRI's highest prices appear to be in line with the other two offerors; its highest annual price is only 9 percent higher than Tri-Cor's and lower than the third offeror's lowest yearly price. It is, in our view, a close question whether SRI's offer is mathematically unbalanced.

Even if we were to conclude that the offer was mathematically unbalanced, for the same reasons discussed concerning SRI's offer under the other solicitation, we have no basis to conclude that this offer is materially unbalanced. SRI becomes the low-priced offeror prior to the completion of the third contract year (35th month) out of five. Since the record shows that the agency also intends to exercise the option to permit performance for all 60 months, the agency could reasonably conclude that SRI's offer will ultimately provide the lowest cost to the government.

The protests are denied.


James F. Hinchman
General Counsel