



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Residential Refuse Removal, Inc.

File: B-247198.6

Date: December 28, 1992

Karl Dix, Jr., Esq., and E. Alan Arnold, Esq., Smith, Currie & Hancock, for the protester.
Theodore M. Bailey, Esq., for Midland Service Corporation, Inc., an interested party.
Capt. Gerald P. Kohns, Department of the Army, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency may not accept a front-loaded bid for refuse collection services where it was mathematically and materially unbalanced because the option year bid prices significantly declined from the base year bid prices, while the level of services required during each year of the contract remained constant, resulting in that mathematically unbalanced bid not becoming the lowest price to the government until the last year of a possible 5-year contract, thus creating doubt that the award will result in the lowest ultimate cost to the government.

DECISION

Residential Refuse Removal, Inc. protests an award to Midland Service Corporation, Inc. under invitation for bids (IFB) No. DAKF40-91-B-0054 issued by the Department of the Army for refuse removal services at Fort Bragg, Camp Mackall and Pope Air Force Base, North Carolina. Residential Refuse asserts that Midland's bid was mathematically and materially unbalanced, and should have been rejected.

We sustain the protest.

The IFB described refuse collection services for troop areas and housing areas separately, allowing for different contractors to service the two collection areas. The IFB contemplated award(s) of a contract for 1 year with 4 option years. The services to be performed during each year were essentially identical.

Award was to be made to the bidder or combination of bidders offering the lowest price for the base year and all 4 option years combined. The IFB incorporated by reference the solicitation provision "Contract Award--Sealed Bidding," Federal Acquisition Regulation (FAR) § 52.214-10, which advised prospective bidders that the government may reject a materially unbalanced bid even if it is the low evaluated bid.¹

The Army received seven bids by the bid opening date of July 2, 1992. Midland submitted an all-or-none bid, covering both the troop and housing areas. Although Midland did not submit the low bid for the housing area, it was the apparent low bidder for the troop and housing areas combined. Residential Refuse submitted the low bid for the housing area and did not bid on the troop area. Waste Industries, Inc. submitted the second low bid for the troop area. The bid prices for these bidders are as follows:

	<u>Midland</u>	<u>Residential Refuse</u>
<u>Housing Area</u>		
Base Year	\$ 333,935.52	\$ 238,212.72
1st Option Year	269,615.04	240,767.28
2nd Option Year	232,530.00	244,599.12
3rd Option Year	232,530.00	247,792.32
4th Option Year	207,152.04	251,624.16
Total	<u>\$1,275,762.60</u>	<u>\$1,222,995.60</u>
	<u>Midland</u>	<u>Waste Industries</u>
<u>Troop Area</u>		
Base Year	\$ 787,648.62	\$ 637,520.00
1st Option Year	635,191.56	637,520.00
2nd Option Year	547,283.10	637,520.00
3rd Option Year	547,283.10	637,520.00
4th Option Year	487,132.02	637,520.00
Total	<u>\$3,004,538.40</u>	<u>\$3,187,600.00</u>
Total for Both Areas	\$4,280,301.00	\$4,410,595.60

¹Paragraph (e) of FAR § 52.214-10 states:

"The [g]overnment may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the [g]overnment even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment."

Of the seven bidders, only Midland front-loaded its prices, i.e., priced the basic contract year significantly higher than the following option years; the other six bids' base and option prices were relatively level.

On August 19, the Army awarded a contract to Midland covering both collection areas. Residential Refuse filed a protest in our Office on August 20. The Army has stayed performance of Midland's contract pending resolution of this protest.

Residential Refuse argues that the Army should have rejected Midland's bid as mathematically and materially unbalanced. The protester first asserts that the significant decreases in Midland's option year prices when compared with its base year prices indicate that Midland has allocated a disproportionate share of the cost of the contract to the base year and, thus, does not become the low bidder until late in the contract term. Residential Refuse alleges that state and local regulation of refuse disposal is changing rapidly and, therefore, the Army probably will not exercise all of the option years of this contract, and that there is doubt whether Midland's bid will actually result in the lowest overall cost to the government.

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 plus overhead and profit, or whether the bid is based on nominal prices for some work and inflated prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Consequently, a bid found to be materially unbalanced may not be accepted. FAR §§ 15.814, 14.404-2(g), 52.214-10(e); Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30; Solon Automated Servs., Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548.

With regard to service contracts that involve evaluation of a base period and option periods, and where the level of service for each period is essentially the same, a large price differential between the base and option periods, or between one option period and another, is prima facie evidence of mathematical unbalancing. Westbrook Indus., Inc., supra; Professional Waste Sys., Inc.; Tri-State Servs. of Tex., 67 Comp. Gen. 68 (1987), 87-2 CPD ¶ 477.

Midland's base year prices range from 24 to 62 percent higher than its option year prices, which is a significant enough deviation to suggest mathematical unbalancing may be present. Fidelity Moving & Storage Co., B-222109.2, May 21, 1986, 86-1 CPD ¶ 476. The assessment of whether a bid is mathematically unbalanced does not merely involve a comparison of the percentage differentials between base and option period prices; the determinative question is whether the pricing structure is reasonably related to the actual costs to be incurred in each year of the contract.² Id.; FAR § 52.214-10. As previously stated, the level of services required during each year of this contract is basically the same. The significant differences in prices between the base and option years bid by Midland therefore do not appear to be reasonably related to the services required. Consequently, the bid is mathematically unbalanced. See Government Leasing Corp., B-245939, Jan. 27, 1992, 92-1 CPD ¶ 117; Fidelity Moving & Storage Co., supra; Solon Automated Servs., Inc., supra.

Midland states that the reason for the declining prices in its bid is that it has to acquire trucks and other equipment in order to perform this contract and that its bid reflects the depreciation of this equipment based on an accelerated method of depreciation.³ Midland asserts that, even though its bid is front-loaded, it is not mathematically unbalanced because its depreciation method allegedly is in accordance with generally accepted accounting principles and because bid front-loading through accelerated depreciation is justified here since Midland allegedly has no other use for the equipment in the event that all of the options are not exercised because it does not intend to pursue this line of business in the future.⁴

²Contrary to the assertions of Midland and the Army, there is no particular mathematical formula as to what degree of price deviation in itself constitutes mathematical unbalancing. Compare Fidelity Moving & Storage Co., supra (bid was mathematically unbalanced; base year prices were from 11 to 30 percent higher than option year prices), with Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656 (bid was not mathematically unbalanced; base year price was 39 percent higher than option year prices).

³Accelerated depreciation methods allocate a greater cost of equipment to the early period of possession in which it will be used and lesser costs during subsequent periods of the useful life of the equipment.

⁴We note that Midland offered identical bid prices for option years 2 and 3. This appears inconsistent with the
(continued...)

An individual bidder's business decisions for front-loading costs, e.g., the bidder's use of a particular depreciation method, are not generally material to the issue of mathematical unbalancing. Mitco Water Labs., Inc., B-249269, Nov. 2, 1992, 92-2 CPD ¶ ____ (reasons for front-loading bid to cover equipment renovation costs are irrelevant); Government Leasing Corp., *supra* (accelerated depreciation method not considered for determination of mathematical unbalancing); Westbrook Indus., Inc., *supra* (reason for front-loading of equipment costs not considered for determination of mathematical unbalancing); Professional Waste Sys., Inc.; Tri-State Servs. of Tex., *supra* (method of financing a bidder's equipment costs not considered for determination of mathematical unbalancing). It is only where, because of the unique nature of the contract or of the equipment required to perform the contract, the equipment will have little or no value to the ordinary bidder in the event of early contract termination that we will consider a bidder's reasons for front-loading. See e.g., Roan Corp., B-211228, Jan. 25, 1984, 84-1 CPD ¶ 116 (front-loading costs in the base year of a bid for a contract to lease a fleet of law enforcement vehicles did not mathematically unbalance the bid where, in the event of early termination, there was no market for leasing fleets of used law enforcement vehicles.) *Id.*

Here, Midland's decision to use an accelerated depreciation method in structuring its bid, and its asserted decision not to pursue similar refuse collection business in the event of early termination, are business judgments not material to an unbalancing determination. The record does not support a conclusion that this contract or the equipment required by it is of a unique nature or at such a location which would

⁴(...continued)
depreciation method it allegedly used, since under that depreciation method and Midland's asserted bidding methodology, there should have been consistently declining prices. Although Midland verified its bid at the Army's request, asserting no mistake had been made, Midland offered to modify its prices for option years 2 and 3, subsequent to bid opening, to offer a lower bid price and different yearly prices. The Army accepted this late modification pursuant to FAR § 14.304-1(e), which permits the acceptance of a late bid modification with terms more advantageous to the government. Although both the Army and Midland reference the modified prices in asserting the lack of mathematical unbalancing, Midland's late submitted prices are not relevant to this protest because Midland's unmodified bid must be the responsive low bid before the Army may properly consider the late modification. See RMS Indus., B-245539, Dec. 9, 1991, 91-2 CPD ¶ 528.

leave the typical bidder with valueless equipment in the event of early termination; the equipment in question here, e.g., garbage trucks, appears to be generic for the refuse collection industry and there is no evidence that this equipment could not remain in useful service in the industry in the event of early termination. Government Leasing Corp., supra; cf. Roan Corp., supra. Indeed, as noted above, Midland was the only one of the seven bidders that submitted a front-loaded bid. Thus, regardless of Midland's business reasons for front-loading its bid prices, its bid is mathematically unbalanced.

Where there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest ultimate cost to the government, the bid is materially unbalanced and cannot be accepted. Westbrook Indus., Inc., supra. In cases of extreme front-loading, where a bid does not become low until late in the term of a contract including option years, the bid is materially unbalanced on its face. Id. (bid was materially unbalanced where it did not become low until final year of a possible 3-year contract); Professional Waste Sys., Inc.; Tri-State Servs. of Tex., supra (two lowest bids were materially unbalanced where one did not become low until the fourth year of a possible 5-year contract and the other did not become low until the final year).

Here, since Midland submitted an all-or-none bid, Midland's combined bid for the housing and troop areas should be compared to the combined bids of Residential Refuse and Waste Industries, the combination of bidders which would be in line to receive the contract awards if Midland's bid is unacceptable, in determining whether Midland's bid is materially unbalanced. Such comparison shows that Midland's all-or-none bid does not become low until the fourth month of the final year of a possible 5-year contract (month 52 of 60 total months). Accordingly, Midland's bid is materially unbalanced and, thus, unacceptable. Westbrook Indus., Inc., supra; Professional Waste Sys., Inc.; Tri-State Servs. of Tex., supra; Solon Automated Servs., Inc., supra.

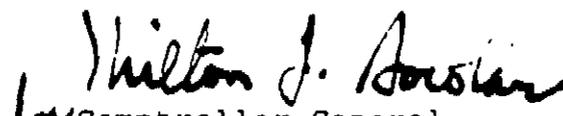
The Army asserts that it intends to exercise all of the option years under the contract and, therefore, there is no doubt that Midland's bid represents the lowest ultimate cost to the government. Notwithstanding a contracting agency's intent to exercise all options,⁵ there is sufficient reason to doubt the low ultimate cost anticipated from a mathematically unbalanced bid where it does not become low until very

⁵Indeed, options cannot be evaluated unless it is determined, prior to soliciting offers, that the government is likely to exercise the options. FAR § 17.206(a).

late in a contract term, including option years, because as the contract goes on, it becomes increasingly likely that intervening events could cause the contract not to run full term, resulting in a higher cost to the government than otherwise would occur if a balanced bid were accepted.⁶ Government Leasing Corp., supra; Westbrook Indus., Inc., supra. Indeed, in response to an earlier protest on the IFB specifications, Residential Refuse Removal, Inc., B-247198, May 11, 1992, 92-1 CPD ¶ 435, the Army stated that the future of its solid waste management program at these facilities was uncertain and could be subject to substantial change. Under the circumstances, there is clearly reason to doubt that Midland's bid will result in the lowest ultimate cost to the government. Thus, Midland's bid was both mathematically and materially unbalanced and should have been rejected as nonresponsive.

We recommend that the Army terminate the contract awarded to Midland and make awards to the Residential Refuse and Waste Industries, if otherwise appropriate. Residential Refuse is also entitled to its costs of filing and pursuing the protest including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992). Residential Refuse should submit its certified claim for its protest costs directly to the agency within 60 working days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.


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⁶Such intervening events relate not only to the agency's procurement plans to exercise all options, but also to the risk that future requirements could change, such that the options no longer reflect the government's actual requirements, or that termination for default may be necessary before a front-loaded contract price actually provides the lowest ultimate cost to the government. See Solon Automated Servs., Inc., supra; Lear Siegler, Inc., B-205594.2, June 19, 1982, 82-1 CPD ¶ 632.