



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McConico Investment Management Corporation

File: B-251895

Date: April 28, 1993

David L. McConico for the protester,
Gregory D. Rothwell, Donald M. Suica, Esq., and Nathan J. Colodney, Esq., Internal Revenue Service, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

On a solicitation for services to test performance of form distribution centers, agency properly rejected apparent low bid as mathematically and materially unbalanced where the bid is substantially front-loaded and does not become low until the final month of the final option year.

DECISION

McConico Investment Management Corporation protests the rejection of its apparent low bid as unbalanced under invitation for bids (IFB) No. IRS-93-0004, issued by the Internal Revenue Service (IRS), for the testing of three IRS Forms Distributions Centers to ensure that they are timely and accurately delivering necessary tax forms to the public. McConico disputes the determination that the firm's bid was unbalanced.

We deny the protest.

The IFB, issued on October 26, 1992, and amended on November 4, contemplated the award of a firm, fixed-price contract for testing services during a 10-month base period and four 1-year options. The work to be performed during the base period and each option year of the contract was identical. The IFB required the contractor to provide one project manager (responsible for planning and directing the project) and a total of 100 testers (from different areas of the country). Each tester was to submit a limited number of

written requests and telephone orders for a variety of forms from the distribution centers. The project manager was responsible for directing the requests, entering data from source documents for computer processing, tabulating the results based on what forms were received from the distribution centers compared to what was ordered, and presenting the results in periodic reports to the agency. To ensure the random nature of the sample orders, the IRS was to provide the contractor with a computer diskette, in a Dbase III database format, delineating the individual order types, document numbers, division of orders among testers, and timing of tester requests.

The IFB incorporated Federal Acquisition Regulation (FAR) § 52.217-5, which states that the government would evaluate bids for award purposes by adding the total price for all options to the total price for the basic requirement, although the evaluation of options would not obligate the government to exercise the options. Award was to be made to the lowest priced, responsive, responsible bidder whose bid price was "considered most advantageous to the [g]overnment considering only price and price-related factors." The IFB also incorporated FAR § 52.214-10, which warned that the government may reject a bid as nonresponsive if the prices between line items or subline items are materially unbalanced. As defined by that clause, a materially unbalanced bid is one based on prices significantly understated for some work and overstated for other work, if "there is a reasonable doubt that the bid will result in the lowest overall cost to the [g]overnment," even if it is the low evaluated bid. FAR § 52.214-10(e).

Seven bids were received by bid opening on November 25. McConico, the apparent low bidder, Rodeman, Brown & Company, the apparent second low bidder, and CEN Corporation, the apparent third low bidder, submitted the following prices:

	<u>McConico</u>	<u>Rodeman</u>	<u>CEN</u>
Base Year	\$147,354	\$ 89,445	\$ 99,473
1st Option Year	\$109,914	\$ 92,128	\$ 99,473
2nd Option Year	\$ 89,114	\$ 94,891	\$ 99,473
3rd Option Year	\$ 72,474	\$ 97,737	\$ 99,473
4th Option Year	\$ 55,834	\$100,669	\$ 99,473
TOTAL	\$477,190	\$477,370	\$497,365

The IRS found that the protester improperly front-loaded its payment schedule "so that 54.2 [percent] of the price fell on the first [2] years of performance and only 28.1 [percent] on the last [2] years for an effort that should have no appreciable learning curve and relatively minor start-up costs." Generally, each of the other bids

received remained constant in the yearly price bid or increased slightly in price over the term of the contract; McConico's bid decreased in price for each successive year of the contract. Relative to the other bids received, McConico's bid did not become the lowest bid until the last month of the 60-month contract term. By letter of December 22, the agency rejected McConico's bid as nonresponsive, pursuant to FAR § 52.214-10, because it was mathematically and materially unbalanced. Award was made to Rodeman, Brown & Company on December 22. This protest followed.

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. Omega One Co., B-251316.2; B-251316.3, Mar. 22, 1993, 93-1 CPD ¶ ____; Residential Refuse Removal, Inc., B-247198.6, Dec. 28, 1992, 72 Comp. Gen. ____, 92-2 CPD ¶ 444; Pearl Properties, B-249524, Nov. 17, 1992, 92-2 CPD ¶ 355. A bid may be regarded as mathematically unbalanced on its face where it is extremely front-loaded and radically different from the pricing pattern evident in other bids. See Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. Next, the bid must be evaluated to determine the cost impact of the mathematically unbalanced bid. Where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid would result in the lowest ultimate cost to the government, the bid is materially unbalanced and may not be accepted. FAR §§ 14.404-2(g), 15.814, 52.214-10(e); Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30.

With regard to service contracts that involve the evaluation of a base and option periods, 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. Id. The determinative question, however, is whether the pricing structure is reasonably related to the actual costs to be incurred in each year of the contract. DGS Contract Servs., Inc., B-250306, Jan. 15, 1993, 93-1 CPD ¶ 49.

McConico explains that its prices for the base period and first option year are higher than its prices for the remaining 3 option years (and that its prices for the required services decreases each year) due to the protester's "very sophisticated and detailed training and program development process and the establishment of state

of the art information management and data processing systems." McConico contends that the substantial costs the firm will incur early in the contract period reflect its planned approach to meeting the agency's requirements and include "costs for the systems design (including the hiring of specially qualified individuals) and initial implementation." The protester states that its prices decline each year to reflect an anticipated learning curve from the training of its personnel and the gradual elimination of its specialized personnel who would develop the system and conduct the training early in the contract period. McConico contends that the inclusion of these costs in the base period was proper since the project, the firm's intended computer system, and the specialized personnel contemplated by the protester are unique. The protester alleges that it would have no use for the efforts of its added specialized personnel and some of its anticipated equipment if the options were not exercised by the agency. The protester contends that although the IFB did not require specialized personnel or the use of sophisticated equipment beyond a dbase III database computer, the IFB did not prohibit a bidder from contemplating a more advanced approach or including the additional costs associated with such approach in the bid's base period price.

A front-loaded bid does not automatically mean that the bid is mathematically unbalanced since start-up costs may be factored into a base period price; nevertheless, the base period price may not carry a disproportionate share of the total contract price. Westbrook Indus., supra. Start-up and equipment costs should be apportioned over the entire evaluated contract period; offerors that front-load those costs are in effect shifting from themselves to the government the risk that the contract will not be extended through the entire contract term, including option periods. Glen Indus. Communications, Inc., B-248223, May 19, 1992, 92-1 CPD ¶ 453. In this regard, a bidder's business decisions for front-loading costs are not generally material to the issue of mathematical unbalancing (that is, the issue of whether each item carries its share of the cost of the work plus overhead and profit), unless the contract is of a unique nature or the equipment required for performance will have little or no value to the ordinary bidder in the event of early contract termination. Residential Refuse Removal, Inc., supra.

The level of effort contemplated by the IFB for the base period and each option year was identical. McConico's base period bid is 164 percent higher than its bid for the fourth option year. The protester's base period bid is higher than its third and fourth option year bids added together; more than half of its total bid price appears in the base and

first option year periods. The six other bids received generally offered level pricing for the base and option periods or presented a gradual, slight increase in price over the term of the contract.

Thus the record shows that the protester's bid is substantially front-loaded based on the IFB's requirement of a constant level of effort and the pricing pattern of the other bids received.¹

Further, despite the protester's contentions to the contrary, the record here does not show that the contemplated contract is of a unique or specialized nature, such that it would have little or no value if the contract options are not exercised. The contract is to coordinate the form requests, and tabulate and report the test results which, as the IFB describes, simply requires a basic computer capable of processing in a Dbase III database format. The record also shows that other firms bid approximately \$10,000 in start-up costs and that the incumbent contractor was paid approximately \$29,000 for the entire base period. Both of these prices are significantly lower than McConico's apparent start-up costs, including equipment and required personnel. Here, we conclude that the IRS reasonably decided that McConico's bid was mathematically unbalanced. See DGS Contract Servs., Inc., supra.

The remaining issue is whether or not McConico's bid is materially unbalanced. We think it is. Relative to the other bids received, McConico's bid does not become low until the final month of the fourth and final option year. Where, as here, a bid does not become low until late in the contract term, it is materially unbalanced on its face. Id. Even though the IRS states that it currently intends to

¹Although the protester in its protest submissions contends that its bid represents a value engineering change proposal which reflects the firm's actual costs for its unique approach to meeting the agency's needs, the protester has not offered any support for this position. FAR § 52.248-1, regarding value engineering change proposals, which was incorporated by reference into the IFB, requires the bidder to fully describe its offered approach, how that approach differs from that contemplated by the solicitation and how the cost of the contract would be affected by the proposed changes. McConico's bid failed to provide any of this information and instead provided a completed bid schedule containing prices for the testing services as described in the IFB.

exercise all of the options (absent budget or other concerns which may arise during the term of the contract), intervening events could alter the agency's initial intent to exercise all options, resulting in a windfall to the bidder and a higher cost to the government than otherwise would occur if a balanced bid were accepted. Residential Refuse Removal, Inc., supra. Based upon the substantial front-loading of McConico's bid, the agency reasonably doubted that the bid would provide the lowest overall cost to the government and properly rejected it as unbalanced. Id.; Westbrook Indus., Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel