



Comptroller General  
of the United States

812251

Washington, D.C. 20548

## Decision

**Matter of:** DGS Contract Services, Inc.; Inventory  
Accounting Services, Inc.

**File:** B-258429; B-258429.2

**Date:** January 19, 1995

Richard D. Lieberman, Esq., Sullivan & Worcester, for DGS Contract Services, Inc., and Darcy V. Hennessy, Esq., Moore, Bucher & Morrison, for Inventory Accounting Services, Inc., the protesters.

Gregory H. Petkoff, Esq., and Lt. Col. John D. Gilliam, Department of the Air Force, 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

A bid for a uniform level of service over one base year and three option years is not unbalanced merely because the bid price for the final option year is understated where the record shows that the bid's prices for the base and first two option years, which were less than the government estimate and roughly the same as the other bids, were not significantly overstated.

### DECISION

DGS Contract Services, Inc. and Inventory Accounting Services, Inc. protest an award to American Coin Meter of Oklahoma, Inc. under invitation for bids (IFB) No. F41612-94-B-0020, issued by the Department of the Air Force for rental and maintenance of commercial-type washers and dryers in laundry rooms at Sheppard Air Force Base, Texas. The protesters allege that the agency improperly rejected their bids for unbalanced pricing.

We sustain DGS's protest and deny Inventory Accounting's protest.

The Air Force issued the IFB on April 25, 1994, contemplating the award of a firm, fixed-price contract for 1 year with 3 option years. The IFB incorporated by reference the provision at Federal Acquisition Regulation (FAR) § 52.217-5, "Evaluation of Options (Jul 1990)," which stated that option prices would be included in the total

evaluated price unless it would not be in the government's best interest, and the provision at FAR § 52.214-10, "Contract Award--Sealed Bidding (Jul 1990)," which stated:

"(e) The Government 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 Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment."

Bid opening was held on June 20. Four bidders submitted the following bids:

| <u>Year</u>     | <u>DGS</u>    | <u>Inventory Accounting</u> | <u>American Coin</u>   | <u>Bidder A</u> |
|-----------------|---------------|-----------------------------|------------------------|-----------------|
| Base            | \$ 77,460     | \$ 81,663                   | \$ 76,205              | \$198,525       |
| Option 1        | 77,460        | 81,663                      | 76,205                 | 129,830         |
| Option 2        | 77,460        | 81,663                      | 76,205                 | 160,351         |
| <u>Option 3</u> | <u>20,400</u> | <u>35,592</u>               | <u>76,205</u>          | <u>138,344</u>  |
| Total           | \$252,780     | \$280,581                   | \$304,820 <sup>1</sup> | \$627,050       |

The government estimate for the work was \$101,088 per year.

American Coin filed an agency-level protest alleging that the lowest and second lowest bids submitted by DGS and Inventory Accounting were mathematically and materially unbalanced. The Air Force found these bids to be unbalanced because, even though the contract requirements were constant over each of the base and option years, these bids reflected significantly lower prices for the final option year, and because these bids did not become lower than American Coin's level-priced bid until the final option year. On September 2, the Air Force awarded the contract to American Coin. These protests followed.<sup>2</sup>

<sup>1</sup>The yearly prices presented here were rounded to the nearest whole dollar and the total price reflects a rounding error. The actual total bid price for American Coin was \$304,819.20.

<sup>2</sup>Since our office notified the Air Force of these protests within 10 calendar days of award, contract performance was suspended. See 31 U.S.C. § 3553(d)(1) (1988).

Each protester alleges that its bid was not unbalanced. Inventory Accounting alleges that DGS's bid is unbalanced.

To be rejected as unbalanced, an offer must be both mathematically and materially unbalanced. Hampton Rds. Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486. A bid is mathematically unbalanced where it contains understated prices for some items and overstated prices for other items. Id. On the other hand, the submission of a below-cost bid is not illegal, and the mere fact that a bid includes understated prices does not justify rejection of the bid. Id.; Wizards-Movers Elite, Inc.; Elkay Transp., Inc., B-255753; B-255753.2, Mar. 29, 1994, 94-1 CPD ¶ 221; Nissho Iwai Am Corp., et al., B-254870 et al., Jan. 24, 1994, 94-1 CPD ¶ 34; OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. Accordingly, even a well-founded allegation of understated prices without evidence of overstated prices does not constitute a legally adequate basis for finding that an offer is mathematically unbalanced under FAR § 52.214-10. Id.

Here, the contract requirements remain constant over all 4 possible years of the contract. The Air Force asserts that DGS's reduced price in the final option year<sup>3</sup> thus indicates mathematical unbalancing.<sup>4</sup> We disagree because, although the Air Force submitted a detailed analysis showing that DGS's price for the final option year appears significantly understated with respect to cost, the agency did not show that any of DGS's prices are overstated with respect to costs. Indeed, the record, including the agency's detailed analysis of costs, shows that DGS's prices are not significantly overstated. DGS's prices for the base

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<sup>3</sup>DGS explained that it was only able to finance its washing and drying machines over 3 years and allocated this cost over the 3 years of the financing agreement, which accounts for its lower price for the fourth possible contract year.

<sup>4</sup>Although the agency correctly states that a pattern of pricing within a bid where 1 option year price is significantly lower than the base year or other option years, and where the contract requirements remain constant over the base and option years, creates a presumption that the bid is mathematically unbalanced, see Inventory Accounting Serv., B-245906, Jan. 27, 1992, 92-1 CPD ¶ 116, a bid can only be considered mathematically unbalanced if prices are both significantly less than cost for some items and significantly overstated in relation to cost for other items. See FAR § 52.214-10(e); Wizards-Movers Elite, Inc.; Elkay Transp., Inc., supra; Nissho Iwai Am Corp., et al., supra; Hampton Rds. Leasing, Inc., supra; OMSERV Corp., supra.

year and the first 2 option years are well below the government estimate and only \$1,255, or 1.65 percent higher than American Coin's low bid price for each of these same periods. Thus, we fail to see how the agency could reasonably find that DGS's prices are significantly overstated with relation to costs. Id.

Accordingly, DGS's bid is not mathematically unbalanced. Thus, DGS's bid cannot be rejected as unbalanced and we need not consider the agency's allegations of material unbalancing.<sup>6</sup> See Nissho Iwai Am Corp., et al., supra. That being so, we deny Inventory Accounting's protest of DGS's bid as unbalanced and the issue of whether Inventory Accounting's bid was unbalanced is academic.

We recommend that the agency terminate the contract awarded to American Coin and make award to DGS, the lowest priced bidder, if otherwise appropriate. We also find that DGS is entitled to recover the reasonable costs of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.6(d)(1). The protester should submit its certified claim for protest costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f)(1).

DGS's protest is sustained and Inventory Accounting's protest is denied.

\s\ James F. Hinchman  
for Comptroller General  
of the United States

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<sup>5</sup>In contrast to the marginal price difference between the bids of DGS and American Coin for the first 3 years, DGS's bid is \$52,040 lower than American Coin's bid overall.

<sup>6</sup>While the agency states that there always exists a possibility that the option for the last year will not be exercised and thus the agency would not realize the lowest price apparent from DGS's bid, the agency offers no evidence to support the likelihood of that possibility.