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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206449.2 DATE: December 20, 1982

MATTER OF: Solon Automated Services, Inc.

DIGEST:

1. The apparent low bid on a contract for a 1-year base period and 2 option years is materially unbalanced where there is reasonable doubt that acceptance of the bid--which has a substantially front-loaded base period price and does not become low until the last month of the last option year--will result in the lowest ultimate cost to the Government.

2. Solicitation which provides for the evaluation of all option years, but does not contain a required provision proscribing unbalanced bids, is defective, and under ordinary circumstances the solicitation should be canceled. Nonetheless, since award has already been made and a substantial portion of the base year requirement has already been performed, termination of the unbalanced bidder's contract would not be in the Government's best interest.

Solon Automated Services Inc. protests the award of a contract to Crown Laundry and Dry Cleaners, Inc. under invitation for bids (IFB) No. DAKF40-82-B-0049 issued by the Department of the Army. The solicitation is for the rental and maintenance of laundry washers and dryers at Fort Bragg, North Carolina, for a base period of one year with two option years. Solon essentially contends that the award was improper because Crown's bid was unbalanced. We sustain the protest.

The solicitation contemplates an "annual requirement" for the installation and maintenance of 800 new washers and 800 new dryers for 12 months of each

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	Crown	Solon
Base Year	$914,500	$338,052
First Option Year	199,058	397,152
Second Option Year	194,433	416,852
Total	$1,307,991	$1,152,056

The IFB specifies that bids are to be evaluated on the following basis:

> "M.2 Award shall be made to the responsible bidder submitting the responsive bid with the lowest evaluated price. The evaluated price of each bid will be 11.115599670 times the total monthly cost for the base year [annual] requirement plus 1.941372008 times the total monthly cost for the base year additional requirement plus 9.635495047 times the total monthly cost for the option year 1 annual requirement plus 1.682867406 times the total monthly cost for the option year 1 additional requirement plus 8.3524686 times the total monthly cost for the option year 2 annual requirement plus 1.458784145 times the total monthly cost for the option year 2 additional requirement.
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> "NOTE: Although option prices are used in calculating the evaluated price, the Government is not obligated to exercise any options."

This formula discounts for the cost of money at an annual rate of 14-3/8 percent, making a front-loaded bid somewhat less competitive than a balanced bid. The application of the formula to the bid prices has the effect of increasing Solon's price advantage from $155,935 to $221,170:

	Crown	Solon
Base Year	$848,127.73	$313,518.38
First Option Year	160,546.99	319,284.17
Second Option Year	135,795.81	290,498.34
Total	$1,144,471.53	$923,300.89

The IFB also permits the consideration of any prompt payment discounts offered for 20 days or more in evaluating bids. Solon offered no prompt payment discount. Crown offered discounts for prompt payment within 20 days as follows: (1) 80 percent for the first month of the annual requirement, (2) 14.5 percent for months 2-12 of the annual requirement, (3) 20 percent for months 13-36 of the annual requirement, (4) 20 percent for the additional requirement in the base and option years, and (5) 1/8 of one percent over and above all the other discounts. The application of Crown's discounts, which total $262,535.30 over the course of the 3-year contract period, reduces Crown's total evaluated price to $911,769.46:

	Crown	Solon
Base Year	$674,991.56	$313,518.38
First Option Year	128,277.04	319,284.17
Second Option Year	108,500.86	290,498.34
	$911,769.46	$923,300.89

On the basis of a price advantage of $11,531.43, the Army awarded the contract to Crown.

Our Office has recognized that unbalanced bidding entails two aspects. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced 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 a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Consequently, only a bid found to be materially unbalanced may not be accepted. Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107.

Solon contends that Crown's bid is mathematically unbalanced because Crown's first year bid price is far greater than its reasonable first year costs and its option prices are far lower than its likely option year costs. We recognize that in a contract such as this, start up costs are substantial; consequently, the base year price may be higher than option year prices. The base and option prices nonetheless must be reasonably related to the expenses the bidder will incur in that year.

Solon has submitted a detailed estimate of costs which indicates that Crown's maximum base year costs are approximately $487,000. Crown's actual base year price is $914,500 before discounts and $731,055 after discounts. Solon's estimate would appear to be conservative since it is based on the retail price of new machines and it does not account for the salvage value of the machines after 1 year. Crown contests this estimate on the basis that it excludes certain costs such as equipment financing charges, sales tax, and building rental. Crown does not, however, provide its own estimate of its costs, nor does it categorically state that its costs will be higher than Solon's estimate. Indeed it would appear that the use of retail prices and omission of salvage value would approximately equal the costs that Crown submits should be added to the estimate. Importantly, the Army concedes that, on the basis of Solon's estimate, the bid is mathematically unbalanced.

Additionally, we observe that Crown's first year bid price is the highest base year bid price submitted and its option year prices are the lowest option years prices submitted. Moreover, Crown's base year bid after discounts is 357 percent higher than its price for the first option year and 367 percent higher than its price for the second option year. In comparison, of the remaining responsive bidders, three offered equivalent prices for the base and option years, one offered slightly higher prices for the option years than for the base year, and one offered slightly lower prices for option year than for the base year. We conclude that the bid is mathematically unbalanced.

The Army argues that although the bid is mathematically unbalanced, it is not materially unbalanced. The Army anticipates that the need for laundry services will continue in future years and that funds will be available to procure the services. Therefore, the Army expects to exercise the options. Thus, the Army argues that it will actually gain the $11,619.54 advantage represented by Crown's bid by exercising both options and consequently the bid is not materially unbalanced.

The determination of whether there is reasonable doubt that the Government will ultimately realize the cost advantage represented by a mathematically unbalanced bid is a factual one which varies depending on the particular circumstances of each procurement. Thus, in two recent decisions we examined bids that were front-loaded and reached two different conclusions on the question of material unbalancing. In Jimmy's Appliance, B-205611, June 7, 1982, 82-1 CPD 542, which the Army cites to uphold the award, we found that a bid for the rental of washers and dryers was not materially unbalanced. In that case the second low bid was nearly twice as high as the allegedly unbalanced bid. Therefore, notwithstanding the front-loading, the Government could expect to realize the cost advantage of the bid very early in the first option year. Even if the contractor eventually defaulted or if the Government did not exercise the final option, the Goverment would still realize a substantial savings over the next low bid.

In Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD 632, which the protester cites in its favor, we examined a similarly unbalanced bid for the operation of a motor pool and determined that it was materially unbalanced. We found that, given the front-loading and the slight price advantage represented by the unbalanced bid, it would not be until well after the exercise of the third and final option year that the total cost of the unbalanced bid would become low. Until that time, a termination for default or failure to exercise an option would make the unbalanced bid relatively more costly than the second low. Therefore, despite the fact that the agency expected to exercise all options, there was reasonable doubt that award would result in the lowest cost to the Government.

We believe that this case is more similar to Lear Siegler than to Jimmy's Appliance on the issue of material unbalancing. Given the extreme front-loading and the relatively small price advantage enjoyed by Crown (about 1 percent), the Army will not realize the cost advantage represented by Crown's bid until the last month of the second option period (month 36). The Government assumes a risk, therefore, that in case of termination for default before the last month or non-exercise of an option, it will be obligated to pay

Crown substantially more than it would have paid Solon. Under the circumstances, we believe the unbalanced nature of Crown's bid creates a reasonable doubt that the Government will obtain cost savings by awarding to Crown.

Additionally, the Army will realize the slight price advantage only if it takes advantage of nearly every prompt payment discount offered by Crown. Had the Army failed to make the first payment within 20 days, it would have effectively raised Crown's price by $58,711.70, and missing any one of the other base year payment deadlines would increase Crown's bid by $10,059.87. Although the IFB and the Defense Acquisition Regulation (DAR) permit the evaluation of prompt payment discounts without limitation,* and therefore the Army's evaluation of the discount was technically proper, the discounts offered by Crown add to our concern that Crown's bid does not in fact represent the lowest cost to the Government.

We conclude that Crown's bid was mathematically and materially unbalanced and should have been rejected. The protest is, therefore, sustained. In this circumstance, we would normally recommend either that the contract be terminated or that no options be exercised. Such a recommendation in this case, however, would not be in the best interest of the Government since it would defeat the very purpose of rejecting unbalanced bids as it would now result in a substantially higher cost to the Government. The contract was awarded to Crown on May 15, 1982, and it would appear that by the time the contract could be terminated, Crown will have performed a substantial portion (eight or nine months) of its base year

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*We note that both the General Services Administration and the Department of Defense have amended the Federal Procurement Regulations (FPR) and the DAR to eliminate the evaluation of prompt payment discounts due to various problems associated with evaluating them. <u>See</u> 47 Fed. Reg. 36164 (1982) (to be codified in FPR § 1-2.407-3); and DAR 2-407.3 (Defense Acquisition Circular (DAC) No. 76-36, June 30, 1982). The DAR amendments were not, however, effective at the time the award was made.

obligation. At that point, the Army will have paid approximately 50 percent of the total cost it will incur for the entire 3-year period. Moreover, a termination near the end of the base year would afford Crown an enormous windfall from its unbalanced bid structure and further compromise the integrity of the competitive bidding system.

Under the circumstances, we believe that the Army should exercise both options, if otherwise appropriate, and make every effort to take advantage of the prompt payment discounts to ensure that it will not pay an inordinately high price for one or two years of service. By letter of today, we are recommending that the Secretary of the Army inform his contracting officials that in cases such as this one, where there is reasonable doubt that acceptance of the low unbalanced bid would result in the lowest cost to the Government, the bid should not be accepted despite the expectation that the options will be exercised.

for Milton J. Socolar
Comptroller General
of the United States

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