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# DECISION



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

FILE: B-218167 DATE: May 15, 1985  
MATTER OF: International Shelter Systems, Inc.

## DIGEST:

The apparent low bid on a contract for a 1-year base period and two 1-year options is materially unbalanced where there is reasonable doubt that acceptance of the bid will result in the lowest ultimate cost to the government. Such doubt may exist where the bid has a substantially front-loaded base period and does not become low until well into the last option year.

International Shelter Systems, Inc. (ISS) protests the Navy's award of contract to Coastal American Corporation (Coastal) under Invitation for Bids (IFB) No. N00421-85-B-0083. The Patuxent River Naval Air Station issued this solicitation in order to lease a mobile office facility for engineers working at its Naval Air Test Center. The lease was to cover a base period of 1 year, and to include two additional 1-year options. ISS challenges the Navy's rejection of its bid as materially unbalanced and thus nonresponsive. We deny the protest.

The solicitation required bidders to submit prices for the base year and option periods, and for installation/removal costs. ISS and Coastal submitted the following bids:

	Coastal	ISS
Install/Remove	\$ 9,286	\$11,770
Base Year	36,000	75,600
Option year 1	36,000	720
Option year 2	36,000	720
Total	\$117,286	\$88,810

ISS argues that its own bid was low, based on the total amounts submitted by each bidder, and that it is therefore entitled to award. In support of this argument, the protester refers to Section M of the IFB, entitled

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"Evaluation Factors for Award," which provides that the government will evaluate offers by adding the total price for all options to the total price for the basic requirement.

In response, the Navy points out that IFB Section M further provided that the government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. A materially unbalanced offer was defined as one based on prices significantly less than cost for some work and significantly overstated for other work. The Navy argues that ISS's bid was heavily front-loaded and therefore mathematically unbalanced. Furthermore, the Navy argues that prices listed for each of the lease years do not accurately represent the true costs for those periods.

There are two aspect to unbalanced bidding. 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, that of 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--a bid found to be materially unbalanced may not be accepted. Solon Automated Services, Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548.

ISS contends that its bid is not mathematically unbalanced because it accurately reflects the true costs of providing the modular building. The protester insists that all of the major costs for constructing the custom-design, single-use building would be incurred in the first year of the lease, and that it is therefore appropriate for the bidder to seek to recover those costs during the base-year period. ISS reasons that although its base-year bid is significantly higher than its bid for the two option-years, the base-year price nonetheless only carries its proportional share of cost and profit. Therefore, ISS contends, it would receive no unjust enrichment if the options were not exercised, but would only receive an appropriate return on its initial investment.

According to ISS, the only costs that the bidder would incur during the option years would be the cost of insurance and limited maintenance expenses, and thus the price to the government should be much lower during these periods. Moreover, ISS emphasizes that buildings of this sort have little or no salvage value once the original tenant is finished using them so that, apparently, the useful life of the asset should be deemed to be the base period of the contract.

However, both the Navy and Coastal contend that the modular building is not unique; rather, it is a five-unit structure composed of individual sections that can be combined in different ways to suit the specific needs of each tenant. The Navy reasons that the structure can therefore be resold or rented at any time. In support of this argument, the Navy notes that ISS's bid was the only unbalanced bid among the four bids the Navy received. Additionally, Coastal has submitted an affidavit from its sales manager stating that the office facility in question is a standard type that can be easily modified for different uses, and which Coastal has been able to sell and lease in the past.

Our Office generally has been willing to consider a bidder's business reasons for front-loading its bid only where a majority of the submitted bids had similarly front-loaded pricing structures. Crown Laundry & Dry Cleaners, Inc., B-208795.2, B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438. Here, we note that the other bidders are able to distribute their costs over the natural life of the asset and to charge a proportionate amount for each year of the lease. Moreover, although business reasons for front-loading bids may well exist in a particular circumstance, we cannot ignore the fact that a bid with this pricing structure enables the bidder to receive during the base contract period government funds more properly allocable to option periods, and permits a windfall to the bidder if all options for some reason are not exercised. The proper test for determining whether a bid is mathematically unbalanced focuses on the pricing structure of all bids and the scope and nature of the services to be rendered, rather than focusing on the business reasons of each bidder. Id. In this regard, we observe that the business reason ISS offers for its bid, i.e., the recoupment of all building costs in the first year even though it will own and use the

equipment in subsequent years, assumes that it is proper to obtain in the base year government funds that are more properly allocable to the option years.

Since ISS's bid for the base period is more than 100 times its price for each of the two option years, even though the goods and services to be provided are the same during each of these periods, we find that the bid is mathematically unbalanced. Furthermore, since ISS submitted the only front-loaded bid, we will not consider whether its internal business reasons justify this pricing method.

However, it is still necessary to determine whether the bid is materially unbalanced. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the government. Solon Automated Services, Inc., supra. The determination of whether reasonable doubt exists is a factual one which varies depending upon the particular circumstances of each procurement. Id.

ISS argues that its bid will result in the lowest cost to the government because the Navy reasonably expects that the requirement will exist and that funds will be available during the two option periods. The protester stresses that the Navy expressed a strong expectation that the options would be exercised, and that similar options had uniformly been exercised in the past. ISS reasons that since there is no reasonable doubt that the options will be exercised, there is no reasonable doubt that its own bid will provide the lowest cost to the government over the 3-year period.

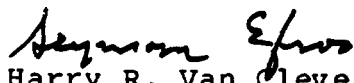
Prior to our decision in Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD ¶ 632, the material unbalancing analysis was limited to determining whether the government reasonably expected to exercise the options. If the exercise was reasonably anticipated, we concluded that the bid was not materially unbalanced. E.g., Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542. We modified this test, however, in the Lear Siegler case. We held that even though the Army expected to exercise the options, since the bid in question was extremely unbalanced and would not become low until the 39th month of a possible

42-month contract, there was a reasonable doubt whether the unbalanced bid would ultimately provide the lowest cost to the government. We recognized that despite the intent to exercise the options, intervening events could cause the contract not to run its full term, resulting in an inordinately high cost to the government and a windfall to the bidder. Here, the front-loaded bid would require the government to pay 86 percent of the total 3-year price in the first year. ISS's bid would not become low until both of the options had been exercised.

Although the Navy generally does expect to exercise the options under this contract, it has expressed some uncertainty in this regard. The agency notes, for example, that the mobile offices would be used by overflow personnel working on a broad range of projects, and that fluctuations in the need for personnel and workspace are more difficult to estimate in this situation than where the specific needs of a single client are involved. Under the circumstances, we are persuaded that there is a reasonable doubt that ISS's bid would actually result in the lowest cost to the government. Therefore, we find that ISS's bid is materially unbalanced and was properly rejected as nonresponsive.

Finally, ISS argues that it has successfully submitted front-loaded bids in the past, and that none of those bids were determined to be materially unbalanced. However, the government's acceptance of an ISS bid in the past is irrelevant to the evaluation of the present bid. Each contract award is a separate transaction, and an agency is not required to accept an offer simply because a previous offer with similar terms was considered acceptable under a different set of circumstances. See M.S. Ginn Co., B-215579, Dec. 26, 1984, 84-2 CPD ¶ 701. As discussed above, the determination of whether a bid is materially unbalanced may vary according to the particular circumstances of each procurement.

The protest is denied.

*for*   
Harry R. Van Cleave  
General Counsel