



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Asphalt Service Co.

File: B-227866

Date: August 11, 1987

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### DIGEST

Where the protester, the incumbent contractor, took advantage of the evaluation method to submit a materially unbalanced bid, its bid properly was rejected and awards made to other firms whose bids were not unbalanced.

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### DECISION

Asphalt Service Co. protests the award of a contract to Morgan Paving Materials Company on items 1 and 3, and to Reed and Graham Inc. for item 4, under invitation for bids (IFB) No. R5-14-87-49, for the supply of various types of asphalt to 14 specified sites in Shasta-Trinity National Forest. Asphalt contends that its low bid improperly was rejected as materially unbalanced.

We deny the protest.

The IFB issued on June 6, 1987, required bidders to provide unit prices per ton and a total price for each item based on an estimated tonnage of asphalt for these 14 sites in the National Forest. Awards were to be made to the low bidder for each item. In addition, the IFB required bidders to provide a price per hour for excess spread time, that is, standby time incurred in the delivery of the asphalt. The IFB also stated that:

"For evaluation purposes 3 hours excess spread time will be added to each bid item. This excess time is not guaranteed."

Based on the unevaluated bids, Asphalt was low for all three items. However, instead of using, for evaluation purposes, the 3 hour standby estimate as stated in the IFB, the agency used actual standby time, based on prior experience, which was substantially higher than 3 hours. When bids were evaluated using these higher standby times, Asphalt's bid was not low for these three items. For example, under item 1, the Forest Service reports that for the previous year's work, the Forest Service incurred 39.24 hours of standby time. In evaluating Asphalt's price for standby time, the

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Forest Service multiplied Asphalt's bid of \$400 per hour for standby time by the previous year's actual standby time of 39.24 hours which resulted in an increase of \$15,696 to Asphalt's bid for item 1. The Forest Service then added the additional \$15,696 to Asphalt's item 1 bid of \$35,490. This resulted in a bid of \$51,186 compared to Morgan's evaluated bid of \$39,809.64 based on 39.24 hours of standby time at Morgan's \$65 per hour rate. The record also shows Asphalt is not the low bidder when the Forest Service uses the prior year's standby for items 3 and 4.

The Forest Service concluded that based on this evaluation method there was substantial doubt that Asphalt's bid would result in the lowest ultimate cost to the government. The Forest Service also found that in the prior year, Asphalt's bid for standby was \$70, and asserts that this year's bid of \$400 per hour bears "no relationship to true costs and reasonable profit." The Forest Service rejected Asphalt's bid as materially unbalanced. The Forest Service awarded to Morgan for items 1 and 3, and item 4 to Reed and Graham Inc.

Asphalt argues that based on the evaluation method in the IFB it was the low bidder for the three items and that the Forest Service improperly used an estimate not stated in the IFB in determining that the firm's bid was unbalanced.

In our view, the Forest Service correctly concluded that it could not accept Asphalt's bid which contained a bid of \$400 per hour for standby time. We have held that the government is not required to accept a materially unbalanced bid.

T. L. James Co., Inc., 64 Comp. Gen. 848 (1985), 85-2 CPD ¶ 296. Asphalt bid \$70 per hour for standby time the previous year and other bidders under the current IFB priced standby time at this rate; Asphalt does not explain why its price for standby time increased by more than 500 percent over the past year. Based on the record, we conclude that Asphalt, the incumbent, submitted an unbalanced bid to take advantage of the faulty estimate and therefore, its bid properly was rejected.

*for* *Simon Efron*  
Harry R. Van Cleve  
General Counsel