



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Westbrook Industries, Inc.

File: B-245019.2

Date: January 7, 1991

Benjamin N. Thompson, Esq., for the protester,
Herbert F. Kelley, Jr., Esq., and Bobby G. Henry, Esq.,
Department of the Army, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Apparent low bid was properly rejected as materially unbalanced where the bid, which is for a constant level of services for 1-year base period and 2 option years, includes a substantially front-loaded base year price to cover equipment cost and does not become low until the next to last month of the second option year, thereby raising a reasonable doubt that the bid would result in the lowest actual cost to the government.

DECISION

Westbrook Industries, Inc. protests the rejection of its apparent low bid as materially unbalanced under invitation for bids (IFB) No. DABT15-91-B-0012, for the rental and maintenance of washers and dryers at Fort Benjamin Harrison, Indiana.

We deny the protest.

The IFB contemplated the award of a fixed-price contract for rental and maintenance services of contractor provided washers and dryers to be installed in various buildings at Fort Benjamin Harrison for a 1-year base period with up to two 1-year options. The IFB provided 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, and also contained the provision at Federal Acquisition Regulation § 52.214-10 which, in relevant part, cautions that a bid may be rejected as nonresponsive if the prices bid are materially unbalanced between line items. As defined by that section, a materially unbalanced bid is one

based on prices significantly less than cost for some work and prices significantly overstated for other work where 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.

The Army received six bids by bid opening on July 15, 1991, ranging from Westbrook's low bid of \$155,952 to \$204,990.26. The evaluated total prices of the two lowest bids were as follows:

	Westbrook	DGS
Base Year (per month)	\$6,498 x 12 (\$77,976)	\$4,389 x 12 (\$52,668)
Option 1 (per month)	\$3,610 x 12 (\$43,320)	\$4,400 x 12 (\$52,800)
Option 2 (per month)	\$2,888 x 12 (\$34,656)	\$4,400 x 12 (\$52,800)
Total (36 month)	\$155,952	\$158,268

On July 16, DGS learned the bid results and filed an agency-level protest alleging that the bid submitted by Westbrook was unbalanced.

In response to the protest, the contracting officer determined that the large pricing differential between Westbrook's base and option periods indicated front-end loading in its base year bid. He also determined that Westbrook's total price did not become low until the 11th month of the second option year; he therefore rejected Westbrook's bid as materially unbalanced and made award to DGS.

Westbrook argues that the agency improperly rejected its low bid as unbalanced because its pricing structure is reasonably related to its actual costs. Westbrook explains that its base bid reflects the cost of acquiring the necessary equipment (\$85,000) amortized over 16 months rather than 36 months because of the risk associated with the announced closure of Fort Benjamin Harrison. Although base closure may not occur during the contract term, Westbrook asserts

that since it is "sensible and reasonable to recover equipment cost relatively soon," its bid was front-loaded in the base year within justifiable, acceptable parameters and is not mathematically or materially unbalanced.

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 specified for that item as well as overhead and profit. If the bid is based on nominal prices for some of the work and enhanced prices for other work, it is mathematically unbalanced. The second part of the test is to evaluate the bid to determine whether award to a bidder that has submitted a mathematically unbalanced bid will result in the lowest overall cost to the government. If award to a party that submits a mathematically unbalanced bid will not result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

With regard to service contracts that involve evaluation of a base period and option periods, a large price differential between the base and option periods, or between one option period and another, is prima facie evidence of mathematical unbalancing. See Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. Westbrook's base year bid of \$77,976 is 80 percent higher than its first option year bid of \$43,320 and 125 percent higher than its second option year bid of \$34,656, despite the fact that the level of services remains constant, and thus the bid clearly is mathematically unbalanced. See id.

Westbrook's explanation for its pricing methodology--that based on the anticipated base closure it sought to recover the bulk of its equipment costs in the base year--is no more than an admission by Westbrook that it submitted a front-loaded bid. While the protester may have a legitimate business concern for so structuring its bid, such a rationale is immaterial so long as the agency obtains reasonably-priced bids from responsible firms that are willing to accept the risks inherent in pricing each element of their bid to carry its proportionate share of the total cost of the work. See id.; Crown Laundry and Dry Cleaners, Inc., B-208795.2; B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438.

It is important to recognize that, whatever business reasons are offered to justify a particular bid, the government may not pay more for an item or service than its reasonable value. See Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108; Edgewater Machine & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630. Thus, while start-up costs may be factored into a base period price so that a

front-loaded base price does not automatically mean that the bid is unbalanced, the base period price may not carry a disproportionate share of the total contract price. Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656; Roan Corp., B-211228, Jan. 25, 1984, 84-1 CPD ¶ 116. In cases where a contractor would have no use for equipment following contract performance, it may allocate the equipment cost to the base period of performance since, if options are not exercised, the contractor would not recover its cost of performance. Applicators, Inc., supra. In other cases, equipment and start-up costs are expected to be apportioned over the evaluated contract period, i.e., including the option periods.


Here, Westbrook concedes that it apportioned its equipment costs over 16 months rather than 36 months. It also makes no claim that it would have no use for the washers and dryers if the options were not exercised. Thus, what Westbrook has attempted to do is shift the risk from itself to the government that contract performance might not extend to 3 years. The government is under no obligation to accept that risk, particularly where other bidders, such as DGS, have accepted that risk and evidently structured their bids in light of it. Accordingly, under these circumstances, we think the contracting officer properly could view the protester's bid as mathematically unbalanced.

Where there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. OMSERV Corp., supra. In cases involving extreme front-loading and where the mathematically unbalanced bid does not become low until the end of the final option year, the bid should not be accepted because, despite the agency's initial intent to exercise the options, intervening events could cause the contract not to run its full term, resulting in inordinately high cost to the government and a windfall to the bidder; in other words, there is reasonable doubt that the mathematically unbalanced bid would ultimately provide the lowest cost to the government. Applicators, Inc., supra; Crown Laundry and Dry Cleaners, Inc., supra. Here Westbrook does not become the low bidder until the 35th month of the 3-year contract, if both options are exercised. Thus, we think the agency had sufficient reason to doubt that acceptance of Westbrook's bid would actually provide the lowest cost to the government, and therefore that it properly rejected the bid as unbalanced. Professional Waste Sys., Inc.; Tri-State Servs. of Texas, 67 Comp. Gen. 68 (1987), 87-2 CPD ¶ 477.

Westbrook's contention that the Army has accepted its bid containing similar pricing methodology under previous procurements at the same installation is not relevant to the

award in this case since each procurement is a separate transaction and agency action under one procurement does not affect the propriety of the agency's action under a different procurement. See Barnes Elec. Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331.

The protest is denied.


for James F. Hinchman
General Counsel