



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mitco Water Laboratories, Inc.

File: B-249269

Date: November 2, 1992

Greg Sefton for the protester,
Robert H. Walker, Jr., for Marine Chemist Service, Inc., an interested party.
Charles J. McManus, Esq., Eric A. Lile, Esq., and L. James Gardner, Esq., Department of the Navy, for the agency.
Tania L. Calhoun and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

The apparent low bid on a contract for a 1-year base period and four 1-year options was properly rejected as materially unbalanced where there is a large price differential between the prices bid for the base and first 2 option years and the lower prices bid for the last 2 option years, where the bid does not become low until the third option year, and where government has indicated doubt as to whether it will exercise all options due to funding uncertainty, as there is reasonable doubt that acceptance of the bid ultimately will result in the lowest overall cost to the government.

DECISION

Mitco Water Laboratories, Inc. protests the rejection of its bid as materially unbalanced and award of a contract to Marine Chemist Service, Inc. (MCS), under invitation for bids (IFB) No. N68836-92-B-0071, issued by the Department of the Navy for the provision of boiler feedwater services to Naval and Military Sealift Command vessels in port at Naval Station Mayport, Florida.

We deny the protest.

The IFB was issued on April 24, 1992, as a 100-percent small business set-aside. It contemplated award of a fixed-price requirements contract for boiler feedwater services for a 1-year base period with up to four 1-year options; the requirements were estimated to be 3,500,000 gallons per year for the base year and for each option year. Bidders were asked for per gallon prices and extended prices based on the per gallon price multiplied by the annual gallon estimate.

The IFB did not include the standard "Evaluation of Options" clause, set out at Federal Acquisition Regulation (FAR) § 52.217-5, which advises bidders that the government will evaluate bids on the total price for the base requirement and all options. The IFB did incorporate the standard clause, set out at FAR § 52.214-10, which cautions that a bid may be rejected as nonresponsive if the prices bid are materially unbalanced between line items, and which defines a materially unbalanced bid as one based on prices significantly overstated in relation to cost for some work and significantly less than cost for other work, and where there is a reasonable doubt that the bid will result in the lowest overall cost to the government.

The Navy received three bids by bid opening date on May 26, priced as follows:

	<u>Mitco</u>	<u>MCS</u>	<u>Ecolochem</u>
Base Year	\$161,000	\$139,650	\$ 350,000
1st Option	161,000	152,250	367,500
2nd Option	161,000	152,250	385,000
3rd Option	105,000	152,250	385,000
4th Option	105,000	152,250	385,000
Total	\$694,500	\$748,650	\$1,873,850

Despite the omission of the evaluation of options clause, the agency included the option prices in its evaluation of the bids.¹ Although Mitco's aggregate bid was low, the contracting officer was concerned that the large pricing differential between the prices Mitco bid for the base year

¹While the FAR provides that a solicitation, which calls for bidders to submit option prices, must state whether the evaluation will include or exclude option prices, FAR § 17.302(b), no bidder, including the protester, has protested the apparent inadvertent omission of this clause. In fact, while the agency addressed this issue in its report, the protester failed to respond to the issue in its comments on that report. We have held that an IFB, such as this one, which requests option prices, but fails to advise bidders as to whether those option prices will be evaluated, is materially defective and not a proper vehicle for award. See Golden North Van Lines, Inc., 69 Comp. Gen. 610 (1990), 90-2 CPD ¶ 44. However, in this case, since the record contains no evidence that award under the original IFB would fail to meet the government's needs or would result in prejudice to the bidders since none of the bidders was misled, we conclude that award under the original IFB based on the bidders' aggregate prices for the base and option years would be proper. See Browning-Ferris Indus. of the South Atlantic, Inc.; Reliable Trash Serv. Co. of Md., Inc., B-217073; B-218131, Apr. 9, 1985, 85-1 CPD ¶ 406.

and first 2 option years, and the prices it bid for the last 2 option years, indicated an unbalanced bid. She found that Mitco's bid was also priced substantially differently from the other two bids in that their prices increased for the option years while Mitco's bid showed a 35 percent decrease in price from the base and first 2 option years to that of the last 2 option years. The contracting officer also determined that while Mitco's total price was 31 percent lower than the next low bidder's price, Mitco's total price did not become low until the tenth month of the third option year.

The contracting officer asked Mitco to examine its bid for a possible mistake in bid or unbalancing, and Mitco confirmed that its bid was correct as submitted. The contracting officer advised Mitco that since its bid would not be low until the end of the third option year, and since there was a possibility that the Navy would not exercise the options, she was rejecting the bid as both mathematically and materially unbalanced. She then made award to MCS based on its next low aggregate bid. Mitco filed an agency-level protest on June 15, which was denied; Mitco subsequently filed this protest in our Office.

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. Second, the agency must 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 may 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.

Mitco asserts that its bid is not unbalanced. The protester contends that it is common in this type of service, due to the high cost of building and renovating the equipment involved, for the expense to be placed at the front end of the contract. Mitco explains that because it needed to renovate its equipment, it maintained the then-current pricing for the first 2 option years to cover renovation costs and then lowered the price after recovery for the last 2 option years to maintain only the same profit margin.

A large price differential between base and option periods, or between one option period and another, may be prima facie evidence of unbalancing. Professional Waste Sys., Inc./ Tri-State Serv. of Texas, 67 Comp. Gen. 68 (1987), 87-2 CPD ¶ 477. Here, while the requirements of boiler feedwater to be supplied are the same in each contract period, Mitco's price for the 1-year base period represents some 23 percent of its total bid, whereas the base period prices for the other bids represent 19 percent of those total bids. Moreover, Mitco's combined price for the base period and the first 2 option years--elements which together comprise only 60 percent of the anticipated 60-month total performance period--represents some 70 percent of its total bid price. In contrast, the percentage in both other bids was 59 percent. In addition, the differential between Mitco's second and third option year prices is approximately 35 percent, and Mitco's bid would not become the low aggregate bid until the tenth month of the third option year.

Mitco's explanation for its pricing methodology--that it needed to recover its equipment renovation costs--is no more than an admission by Mitco 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 bids to carry its proportionate share of the total cost of the work. Westbrook Indus., Inc., B-245019.2, Jan. 7, 1992, 92-1 CPD ¶ 30; Crown Laundry and Dry Cleaners, Inc., B-208795.2; B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438.

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 Indus., Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108; Edgewater Mach. & 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. Westbrook Indus., Inc., supra; Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656. 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. Id. 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, Mitco concedes that it apportioned its costs of equipment renovation over 36 months rather than 60 months. It also makes no claim that it would have no use for the equipment if the options were not exercised. Thus, what Mitco has attempted to do is shift the risk from itself to the government that contract performance might not extend to 5 years. The government is under no obligation to accept that risk, particularly where other bidders, such as MCS, 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. Westbrook Indus., Inc., supra.

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. Our material unbalancing analysis focuses on various factors, including whether the government reasonably expects to exercise the options; circumstances suggesting that some or all of the options will not be exercised give rise to a reasonable doubt that an unbalanced bid will result in the lowest cost to the government. See G.L. Cornell Co., B-236930, Jan. 19, 1990, 90-1 CPD ¶ 74.

The agency states that circumstances have arisen which suggest that some or all of the options may not be exercised. The agency points primarily to funding problems that it believes may preclude option exercise. It reports in this regard that after the solicitation was issued, congressionally-mandated cuts in the Department of Defense budget forced the Navy to revise plans and begin reducing the size of its fleets. The Navy asserts that this fleet reduction will decrease the number and type of ships home ported in Mayport. The IFB's estimated quantity of 3,500,000 gallons per year was based on both the prior history of quantities used and projected future needs. Since those projections were made prior to the budget cuts, they were calculated for a larger number of ships than will apparently be home ported in Mayport at the end of the 5-year period for which this contract, with options, was intended. Each ship uses a given amount of boiler feedwater, and the quantity of boiler feedwater required at Mayport will be reduced by that amount when the ship is no longer home ported there. Because a reduction in the number of ships will clearly result in diminished requirements for boiler feedwater, we find that there is uncertainty whether the Navy will have the requirements which would lead it to

exercise all of the options. See G.L. Cornell Co., supra. In this regard, the Navy reports that it did not exercise the last option on the prior contract for these services because then current estimates were well below those stated in the contract. Thus, we conclude that the contracting officer properly considered Mitco's bid to be materially unbalanced.

Mitco argues that the agency should have informed it of these funding problems prior to the submission of bids, and, if the agency were unsure as to whether the options would be exercised, it should have reduced the option quantities or deleted some or all of the options. The agency states that the information regarding the projected decreases in the numbers of ships home ported at Naval Station Mayport came subsequent to issuance of this solicitation, and the protester presents no evidence to contradict this assertion. While the protester suggests that it relied on the options being exercised, thus rendering irrelevant the fact that Mitco does not become the low bidder until the third option year, we note that an option is just that--its exercise must depend ultimately on an agency's needs rather than the coercive effects of an unbalanced contract. Inventory Accounting Serv., B-245906, Jan. 27, 1992, 92-1 CPD ¶ 116.

With regard to Mitco's allegations that the awardee has never performed work of this size and that, post-award, it has delivered equipment that does not meet the specifications, whether an offeror can and will deliver equipment in conformance with contract requirements are matters of both the contracting officer's affirmative determination of the awardee's responsibility and contract administration, which our Office generally will not consider except in circumstances not present here. Eyring Corp., B-245549.7, Mar. 31, 1992, 92-1 CPD ¶ 320; Caelter Indus., Inc., B-203418, Mar. 22, 1982, 82-1 CPD ¶ 265.

Finally, Mitco's contention that the Navy has accepted its bid containing similar pricing methodology under previous procurements 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