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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Omega One Company

File: B-251316.2; B-251316.3

Date: March 22, 1993

John R. Meyer for the protester.
Lt. Col. John J. Powers and Capt. Michael J. O'Connor, Department of the Air Force, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Although the apparent low bid on a refuse collection contract was mathematically unbalanced, it was not materially unbalanced, and therefore nonresponsive, where the bid becomes low early in the contract term, including option periods, and where the agency reasonably intends to exercise all options.

2. The front-loaded base period price of a mathematically unbalanced bid for a refuse collection contract, in which the base period price was not even twice any of the option period prices, was not so grossly front-loaded as to be tantamount to an improper advance payment that would require the rejection of the bid.

DECISION

Omega One Company protests the proposed award of a contract to Mid-Western Waste, Inc. under invitation for bids (IFB) No. F02601-92-B0017, issued by the Department of the Air Force for refuse collection at Davis-Monthan Air Force Base, Arizona. Omega contends that Mid-Western's apparent low bid is materially unbalanced. Omega also protests the acceptability of the second low bid of Waste Management of Tucson.

We deny the protest in part and dismiss it in part.

The IFB contemplated the award of a contract for refuse collection and related services for a 9-month base period and 4 option years. The IFB schedule contained the identical 15 line items for each base and option period. Some line items requested pricing on a monthly basis, while other line items were to be based upon stated estimated quantities.

Bidders were informed that the government would evaluate bids by adding the total price for all options to the total price for the base requirement. The IFB contained the standard sealed bidding award clause, set forth at Federal Acquisition Regulation (FAR) § 52.214-10, that, in pertinent part, cautions that a bid that is materially unbalanced may be rejected as nonresponsive.

The Air Force received 11 bids, ranging from $999,778 to $2,070,666. The three lowest priced bids are as follows:

	Mid-Western	Waste Management	Omega
Base	$231,012	$168,763	$187,375
Option 1	211,177	230,803	249,867
Option 2	206,206	238,522	249,867
Option 3	185,220	246,793	249,867
Option 4	166,163	257,364	249,867
TOTAL	$999,778	$1,141,705	$1,186,843

Omega protests that Mid-Western's bid should be rejected as mathematically and materially unbalanced. Omega also argues that acceptance of Mid-Western's front-loaded bid is tantamount to an improper advance payment.

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 plus overhead and profit, or whether the bid is based on nominal prices for some work and inflated prices for other work. Next, the bid must be evaluated to determine the cost impact of the mathematically unbalanced bid. Where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid would result in the lowest ultimate cost to the government, the bid is materially unbalanced and may not be accepted. FAR §§ 14.404-2(g), 15.814, 52.214-10(e); Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30.

With regard to service contracts that involve the evaluation of a base and option periods, where the level of service for each period is essentially the same, a large price differential between the base and option periods, or between one option period and another, is *prima facie* evidence of mathematical unbalancing. *Id.*; Professional Waste Sys., Inc.; Tri-State Servs. of Tex., 67 Comp. Gen. 68 (1987), 87-2 CPD ¶ 477. However, the assessment of whether a bid is mathematically unbalanced does not merely involve a comparison of the percentage difference between the base and option period prices. The determinative question is whether the pricing structure is reasonably related to the actual costs to be incurred in each year of the contract. DGS Contract Servs., Inc., B-250306, Jan. 15, 1993, 93-1 CPD ¶ 49.

Here, Mid-Western's base period price ranges from 31 percent to 46 percent higher than its option year prices,[1] and Mid-Western's total base period price represents 24 percent of the total contract price. Mid-Western informed the agency that the graduated reduction in its bid prices for the base and option years is attributable to the recovery of start-up costs (such as, the purchase and transportation of equipment, the hiring of new employees, and higher insurance and workers compensation premiums in the first 3 years of the contract), and to a learning curve that "takes into account the implementation of procedures and employee training which improve efficiency and reduce costs over time."

Mid-Western's explanation for its pricing methodology is no more than an admission that it front-loaded its bid. However, a front-loaded bid does not automatically mean that the bid is mathematically unbalanced since start-up costs may be factored into a base period price; nevertheless, the base period price may not carry a disproportionate share of the total contract price. Westbrook Indus., Inc., supra. Start-up and equipment costs should be apportioned over the entire evaluated contract period; offerors that front-load those costs are in effect shifting from themselves to the government the risk that the contract will not be extended through the entire contract term, including option periods. Glen Indus. Com., Inc., B-248223, May 19, 1992, 92-1 CPD ¶ 453. In this regard, a bidder's business decisions for front-loading costs are not generally material to the issue of mathematical unbalancing (that is, the issue of whether each item carries its share of the cost of the work plus overhead and profit), unless the contract is of a unique nature or the equipment required for performance will have little or no value to the ordinary bidder in the event of early contract termination. Residential Refuse Removal, Inc., B-247198.6, Dec. 28, 1992, 72 Comp. Gen. ___, 92-2 CPD ¶ 444. The record here does not show that the contemplated contract is of a unique nature or that the equipment to be acquired is of a unique or specialized nature, such that it would have little or no value if the contract options are not exercised. Therefore, Mid-Western's front-loaded bid is mathematically unbalanced.

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[1]We calculated the percentage difference between Mid-Western's base and option prices by annualizing Mid-Western's bid price for the 9-month base period.

We do not find, however, that Mid-Western's bid is materially unbalanced. A mathematically unbalanced bid, such as Mid-Western's, can be accepted unless there is reasonable doubt whether acceptance of the bid would result in the lowest overall cost to the government. DGS Contract Servs., Inc., B-245400, Dec. 30, 1991, 92-1 CPD ¶ 16. Our material unbalancing analysis focuses on various factors, including whether the government reasonably expects to exercise the options, see G.L. Cornell Co., B-236930, Jan. 19, 1990, 90-1 CPD ¶ 74, and whether the bid is so extremely front-loaded that it does not become low until late in the contract term, including option years. See Residential Refuse Removal, Inc., supra.

Mid-Western's bid becomes low, vis-a-vis Omega's bid, in the second month of the second option year, and becomes low, vis-a-vis Waste Management's bid, in the first month of the third option year. The Air Force asserts that it intends to exercise all the contract option periods, and there is no credible evidence that belies this intention. Since there is no reasonable doubt that Mid-Western's bid will result in the lowest overall cost to the government, Mid-Western's bid is not materially unbalanced.

Even where a mathematically unbalanced bid represents the lowest overall cost to the government, there are certain limited situations where a grossly front-loaded or unbalanced bid should not be accepted where its acceptance would be tantamount to allowing an advance payment. FAR § 52.214-10(e); see ACC Constr. Co., Inc., B-250688, Feb. 16, 1993, 93-1 CPD ¶ ___; Aydin Corp., B-245461, Jan. 13, 1992, 92-1 CPD ¶ 51. We have found bid prices to be grossly front-loaded only where the front-loaded prices were many multiples higher than the value of the work to be performed or the remaining contract prices. See, e.g., ACC Constr. Co., Inc., supra (line item bid price of $4.7 million compared to the government's estimate and other bids of $1.5 to $2.6 million); Riverport Indus., Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd, B-218626.2, July 31, 1985, 85-2 CPD ¶ 108 (first article unit prices were $185,000 and the production unit prices were $250); Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 CPD ¶ 327 (first article unit prices were $15,000 and the production unit prices were $408.90); Edgewater Mach. & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630 (first article unit prices were $125,000 and the production unit prices were $301); and Nebraska Aluminum Castings, Inc., B-222476, June 24, 1986, 86-1 CPD ¶ 582, aff'd, B-222476.2, Sept. 23, 1986, 86-2 CPD ¶ 335, reaff'd, B-222476.3, Nov. 4, 1986, 86-2 CPD ¶ 515 (first article unit prices were $22,510 and the production unit prices were $19.17).

Mid-Western's base period price is not even 2 times any of its option period prices and is only 27 percent higher than the base period price of the next low bidder. Thus, we see no basis for finding gross front-loading. See Aydin Corp., supra (first article units priced approximately twice the production unit prices did not grossly front-load the bid); Dodge Romig Tex Corp., B-241810, Mar. 5, 1991, 91-1 CPD ¶ 246 (first article priced two to three times production unit prices does not grossly front-load the bid).

In sum, we find no basis to reject Mid-Western's bid as materially unbalanced and we deny Omega's protest of the award.[2] Under the circumstances, we need not consider Omega's protest of Waste Management's bid and dismiss it as academic.

Robert P. Murphy
for James F. Hinchman
General Counsel

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[2]Omega also argues that Mid-Western will not perform the entire contract term, including option periods, because it "will not be able to afford to do so." The ability of Mid-Western to perform the promised contract work concerns the agency's affirmative determination of Mid-Western's responsibility, which we will not consider absent a showing of possible fraud or bad faith or that the solicitation contains definitive responsibility criteria that allegedly have not been applied. 4 C.F.R. § 21.3(m)(5) (1992). Since Omega has not alleged bad faith or fraud or the misapplication of definitive responsibility criteria, we will not consider the question of Mid-Western's affirmative responsibility. See Lucas Place, Ltd., B-238008; B-238008.2, Apr. 18, 1990, 90-1 CPD ¶ 398.