



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Grunley Schlosser Joint Venture

File: B-274012

Date: October 24, 1996

Herman M. Braude, Esq., and Samuel M. Morrison, Jr., Esq., Braude & Margulies, for the protester.

Douglas L. Patin, Esq., and Robert Symon, Esq., Spriggs & Hollingsworth, for Morse Diesel International, Inc., an intervenor.

Emily C. Hewitt, Esq., Gary F. Davis, Esq., and Kathleen M. McCartney, Esq., General Services Administration, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Low bid under an invitation for bids calling for a base bid and two options is not materially unbalanced where there is no basis to conclude that the bid contains significantly overstated prices for the base bid such that it could be considered mathematically unbalanced.
 2. Base bid which is less than, two times greater, than the government's estimate or the protester's next low bid is not so front-loaded as to be tantamount to an improper advance payment that would require rejection of the bid.
-

DECISION

Grunley Schlosser Joint Venture protests the award of a contract to Morse Diesel International, Inc. under invitation for bids (IFB) No. GS-11P-96-MKC-0015, issued by the General Services Administration (GSA) for modernization of the Interstate Commerce Commission (ICC)/U.S. Customs Service (USCS) buildings complex in Washington, D.C. Grunley Schlosser argues that Morse Diesel's bid should have been rejected as unbalanced.

We deny the protest.

The IFB, issued May 16, 1996, contemplated the award of a firm, fixed-price contract for the modernization of the ICC building, the USCS building and a connecting wing building. The renovation is to proceed in several phases while the buildings remain partially occupied. Bidders were required to provide a total price for a base bid, option 1 and option 2. The base bid includes the replacement of the

mechanical and electrical systems in the connecting wing building and associated work in the ICC building; option 1 includes ICC building modernization, with unit prices for tenant fit-out and phased occupancy of the finished buildings; and, option 2 includes the USCS and connecting wing buildings modernization, with unit prices for tenant fit-out, and phased occupancy of the finished buildings. Unit prices were also solicited for specific line items under options 1 and 2 and for prices for separate options A through L which include additional associated work for the base bid and options 1 and 2. The contract was to be awarded to the bidder who submitted the lowest total bid, computed by adding the base bid, option 1 with associated unit prices, option 2 with associated unit prices and options A through L.

At bid opening on August 7, four bids were received, ranging from Morse Diesel's low bid of \$118,900,000 to a high bid of \$142,170,128; Grunley Schlosser's bid of \$128,409,024 was second low. The government prepared two estimates for the work: a July 23, 1996 estimate which projected a total project cost of \$110,098,469, including an estimated base cost of \$5,922,558; an August 27 estimate which projected a total project cost of \$117,948,337, including an estimated base cost of \$13,799,576. The adjusted estimate was primarily based on a comparison to costs at another comparable project and was increased to reflect the more realistic cost of a phased and difficult project and to reflect cost escalation. The adjusted estimate also included three addenda not included in the July 23 estimate. The four bids received were as follows:

	Morse Diesel	Grunley Schlosser	Clark Construction	Blake Construction
Base	\$21,000,000	\$13,185,000	\$16,895,000	\$48,160,000
Option 1	\$40,000,000	\$52,052,450	\$55,000,000	\$36,607,556
Unit prices Option 1	\$1,264,131	\$1,369,550	\$1,570,145	\$1,470,444
Option 2	\$51,900,000	\$56,463,000	\$60,000,000	\$50,397,000
Unit prices Option 2	\$1,712,391	\$1,843,024	\$2,089,940	\$1,950,128
Options A to L	\$3,023,478	\$3,496,000	\$3,887,000	\$3,575,000
Total	\$118,900,000	\$128,409,024	\$139,442,085	\$142,170,128

Grunley Schlosser contends that the award to Morse Diesel is improper because Morse Diesel's bid is unbalanced. Specifically, the protester asserts that Morse Diesel's price for the base bid is excessive, and would give Morse Diesel an illegal

advance payment¹ or a monetary windfall if the options are not exercised. The protester takes the position that the large pricing differential between Morse Diesel's price for the base bid, the government's July 23 estimate and its own base bid establish that Morse Diesel's bid is mathematically unbalanced.

Grunley Schlosser also argues that because Morse Diesel's bid does not become low until the agency exercises the first option, it is materially unbalanced in that there is a reasonable doubt that the offer actually represents the lowest cost to the government. Grunley Schlosser cites International Shelter Sys., Inc., 64 Comp. Gen. 519 (1985), 85-1 CPD ¶ 549 and Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD ¶ 632 and argues that these cases suggest that an agency's expectation that it will exercise the options is immaterial and such a bid must be rejected as materially unbalanced. The protester also contends that because option 1 will not be exercised until completion of the tenant fit-out design documents and the relocation of current tenants, there is no reason to believe the government will exercise the options under this solicitation.

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; if the bid is based on nominal prices for some work and inflated prices for other work, it is mathematically unbalanced. The second aspect—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 the mathematically unbalanced bid will result in the lowest ultimate cost to the government or where it is so grossly front-loaded that its acceptance would be tantamount to allowing an advance payment. Rust Int'l Corp.; ABB Susa, Inc./Brown & Root, a Joint Venture, B-256886.2 et al., Aug. 30, 1994, 94-2 CPD ¶ 84.

The record simply does not establish that Morse Diesel's bid is mathematically unbalanced. Grunley Schlosser's argument is primarily based on a comparison of the government's estimate and its own bid with Morse Diesel's. However, pricing involves subjective business judgments and comparison of a competitor's prices with one's own prices or with the government's estimate is not by itself sufficient to establish price enhancement. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. Despite Grunley Schlosser's assertion that Morse Diesel's base prices are overstated relative to the government's estimate and relative to Grunley Schlosser's prices, in fact, there is no basis to conclude that Morse Diesel's base price is

¹An advance payment occurs when a payment under a contract to provide services or deliver an article is more than the value of the services already provided or the article already delivered. Integrated Protection Sys., Inc., B-254457.2; B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24.

significantly enhanced or internally inconsistent. Indeed, Morse Diesel's base price is not significantly higher than the base price of any of the offerors: it is only 37 percent higher than the protester's base bid price, 24 percent higher than Clark's base price and less than half of Blake's base bid price. Similarly, Morse Diesel's base price is only approximately one-third higher than the adjusted government estimate. Moreover, Morse Diesel provided GSA a detailed breakdown of its estimated costs for the base bid and explained that its relatively higher base bid reflects its judgment that labor costs will be relatively higher due to the inefficiencies caused by the working conditions. The record simply does not show that Morse Diesel's bid is mathematically unbalanced.

Even if Morse Diesel's bid were mathematically unbalanced, the acceptance of the bid would not be objectionable unless the bid is also materially unbalanced, that is, 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, contrary to the protester's assertion,² whether the government reasonably expects to exercise contract 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 options. DGS Contract Servs., *supra*. Here, as noted above, Morse Diesel's bid becomes low relative to all of the bids received with the exercise of the first option, and under the circumstances here³ there is no reasonable doubt that Morse Diesel's bid will result in the lowest overall cost to the government.

There are certain limited situations where a mathematically unbalanced bid, even though it represents the lowest overall cost to the government, is grossly front-

²The protester's reliance on International Shelter Sys., Inc. and Lear Siegler, Inc., is misplaced. We did not find in either of these decisions, as Grunley Schlosser suggests, that the agency's intent to exercise options is immaterial to the determination of whether a bid represents the lowest cost to the government. Rather, in both decisions, we found that even though the agency expected to exercise the options, the bids in question did not become low until the exercise of the last option year. Therefore, because the bids were not low until late in the last option periods, there was a reasonable doubt that the bids would result in the lowest ultimate cost to the government.

³The record contains GSA's unequivocal statement that it intends to exercise option 1 under this contract, and the minutes of two pre-bid conferences during which agency personnel announced that it had obtained funding for the base contract and option 1 and that funding for option 2 was anticipated for another year.

loaded and should be rejected because payments made under a contract awarded pursuant to such a bid would amount to an improper advance payment. We have found bids to be grossly front-loaded 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., Riverport Indus., Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108 (first article unit prices were \$185,000 and the production unit prices were \$250); ACC Constr. Co., Inc., B-250688, Feb. 16, 1993, 93-1 CPD ¶ 142 (line item bid price of \$2.2 to \$3.2 million higher than the government's estimate and other bids); F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ 573 (line item bid price of \$75,000 compared to government's estimate of \$13,741); Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 CPD ¶ 327 (first article prices were \$15,000 and the production unit prices were \$408.90); 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 prices were \$22,510 and the production unit prices were \$19.17); Edgewater Mach. & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630 (first article prices were \$125,000 and the production unit prices were \$301). On the other hand, front-loaded bids which are not grossly front-loaded may be accepted. See Integrated Protection Sys., Inc., B-254457.2; B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24 (installation price less than three times the government's estimate and not even two times greater than the next low bidder's price); Dodge Romig Tex Corp., B-241810, Mar. 5, 1991, 91-1 CPD ¶ 246 (first article prices approximately three times the production unit price); Aydin Corp., B-245461, Jan. 13, 1992, 92-1 CPD ¶ 51 (first article units priced approximately twice the production unit price).

Here, while Grunley Schlosser argues that Morse Diesel's bid is so grossly front-loaded that it cannot be accepted, for the same reasons that we concluded there was no mathematical unbalancing, we view the differentials to be simply insufficient

to render the bid grossly front-loaded. Morse Diesel's base bid is not even two times greater than the government's adjusted estimate or the protester's next low bid. We see no basis for finding gross front-loading in these circumstances.⁴

The protest is denied.

Comptroller General
of the United States

⁴In response to the protest, GSA also reviewed the timing of the work to be performed under the base bid and option 1 to determine when the contractor would be paid for base bid work. Based on that review, GSA determined that advance payments will be precluded under the contract because only a limited amount of base bid work can be accomplished before the contractor will be performing both the base bid work and option 1 work. Although the protester argues that this analysis is incorrect and contrary to the terms of the solicitation, we need not address this issue since, as explained above, we do not find Morse Diesel's base bid unbalanced regardless of when the work will be performed and the contractor will be paid.