



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Outer Limb, Inc.

**File:** B-244227

**Date:** September 16, 1991

Michael N. Warshafsky, Esq., for the protester.  
Allen W. Smith, Department of Agriculture, for the agency.  
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

## DIGEST

Protester's low bid on requirements contract was properly rejected as materially unbalanced where protester offered mathematically unbalanced price and agency had a reasonable doubt that award to protester would result in the lowest overall cost to the government in light of the inherent unreliability of its estimates.

## DECISION

Outer Limb, Inc. protests the decision of the Forest Service, U.S. Department of Agriculture, to reject its bid submitted in response to invitation for bids (IFB) No. 16-91-34, for cone survey and collection within the Wallowa-Whitman National Forest. Although Outer Limb's bid was low for two of six line items under the IFB, it was rejected on the basis of the contracting officer's determination that the bid was materially unbalanced. Outer Limb contends that the contracting officer's determination in this respect was erroneous and unreasonable.

We deny the protest.

The solicitation, issued on March 6, 1991, sought the award of a requirements contract for the services and identified six separate line items each covering a different location. Each line item included estimated requirements for the particular work specified. The IFB also included corresponding detailed descriptions of the line item requirements. The IFB provided for single or multiple awards, on a line item basis, depending upon the lowest overall cost to the government.

At bid opening on April 29, Outer Limb was the apparent low bidder for line items 1 and 5. However, the contracting officer determined that Outer Limb's pricing was unbalanced for these two line items and on that basis awarded those requirements to the second low bidder.

Both line items at issue are further broken down into sub-items. Under line item 1.3A (Ponderosa Pine), the IFB requested unit prices for collecting cones for tree improvements (TI) needs and for reforestation (RF) needs. For TI needs, the line item included an estimated quantity of 50 trees; for RF needs an estimate of 43 bushels of cones was stated. Outer Limb bid unit prices of \$45 per tree for TI needs and \$1 per bushel for RF needs. Similarly, line item 5.1A (Ponderosa Pine), requested unit prices for both TI and RF requirements. An estimate of 63 trees was stated for TI needs, and an estimate of 126 bushels of cones was stated for RF. In response, Outer Limb bid unit prices of \$48 and \$1 respectively.

According to the evaluation plan set forth in the solicitation, Outer Limb was the low bidder with respect to line items 1 and 5. However, the contracting officer concluded that Outer Limb's bid would not likely result in the lowest overall cost to the government because he believed that the firm bid nominal prices for the RF items and enhanced prices for the TI items, and thus made award to the second low evaluated bidder.

There are two aspects to unbalanced bidding. The first is a mathematical evaluation of the bid to determine whether each element of the bid carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is not materially unbalanced unless there is reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the government. USA Pro Co., Inc., B-220976, Feb. 13, 1986, 86-1 CPD ¶ 159. With regard to requirements contracts that involve the evaluation of estimated quantities, where the estimates are a reasonably accurate representation of actual anticipated needs, a low evaluated bid, even if mathematically unbalanced, is generally not materially unbalanced. See District Moving & Storage, Inc. et al., B-240321 et al., Nov. 7, 1990, 90-2 CPD ¶ 373. However, where the agency has substantial reason to believe that its actual needs may deviate significantly during performance from the estimates it may reasonably view a mathematically unbalanced bid as not clearly representing the lowest cost to the government and therefore as materially

unbalanced. Food Servs., Inc., B-243173; B-243173.2, July 10, 1991, 91-2 CPD ¶ \_\_\_\_.

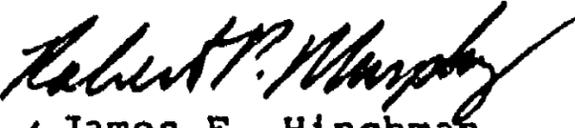
In this case, the agency argues that Outer Limb's bid for line items 1.3A and 5.1A is mathematically unbalanced because the unit prices of \$1 for RF needs are nominal whereas the significantly higher unit prices for TI needs are overstated. The agency further argues that these prices are materially unbalanced because they are not likely to result in the lowest ultimate cost to the government, considering the nature of the requirements. The agency explains that TI needs take priority over RF needs and therefore, depending upon the volume of cone production, the requirements for collection of cones for RF needs may likely fluctuate. The agency further notes that cone production for Ponderosa Pine is generally cyclical in nature (one good production every 5 to 7 years) and because the last good production year was 1988-1989, it is likely that this year's volume will be low. Although the contracting officer states that the solicitation estimates represent a reasonable forecast of the probable extent of work under the contract, he also explains that actual cone production is dependent upon many factors and is very difficult to predict with accuracy. He further notes that the potential for near total cone failure is a real possibility. In summary, the agency maintains that there is a reasonable probability of the contractor's having to collect all of the priority TI cones and relatively few RF cones. Because Outer Limb bid relatively high unit prices for TI needs and low prices for RF needs, the agency concludes that there is a reasonable doubt that award to Outer Limb would result in the lowest actual cost to the government.

From a comparison of the bids received, it is apparent that Outer Limb's pricing for line items 1.3A and 5.1A is in fact mathematically unbalanced. There is a large disparity between Outer Limb's bid for these items and the amounts bid by other bidders for the same items. We also agree that the protester's bid could reasonably be found materially unbalanced. While the agency believes that the solicitation estimates represent the best estimate of the government at the time the solicitation was issued, it also realizes that they may be unreliable given the inherent difficulty in accurately predicting cone production. As indicated above, the agency points to a number of reasons for this difficulty and the protester does not dispute them.

In fact, it would appear from the record that the protester was aware of the inherent unpredictability of cone production, especially in the area of RF needs, and designed a pricing strategy to that advantage. As indicated above, where an agency cannot improve upon its estimates but has substantial reasons to believe that during contract performance its actual

needs may deviate significantly from those estimates, the agency can reasonably view a mathematically unbalanced offer as not clearly representing the lowest cost to the government. Under the circumstances here, we think that the Forest Service reasonably determined Outer Limb's bid for line items 1 and 5 to be materially unbalanced and on that basis properly rejected the bid.

The protest is denied.

  
James F. Hinchman  
General Counsel