

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

30857

FILE: B-216707 **DATE:** April 1, 1985
MATTER OF: Riverport Industries, Inc.

DIGEST:

1. Agency acted reasonably in allowing correction of a mistake in bid where the bidder's worksheets show an inadvertent error in failing to add a \$7.00 item, thus clearly establishing that a mistake was made, how the mistake occurred, and the amount of the intended bid.
2. Bid that was grossly unbalanced mathematically should have been rejected since acceptance of the bid was tantamount to allowing an advance payment.

Riverport Industries, Inc. protests an award to B-K Manufacturing Company, Inc., under invitation for bids (IFB) No. DAAH01-84-B-0090 issued by the United States Army Missile Command. Riverport contends that B-K was improperly permitted to correct a mistake in its bid after bid opening. Riverport also contends that B-K's bid was unbalanced and should have been rejected as nonresponsive.

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

The IFB solicited bids to furnish 38,431 TOW Missile overpacks plus two units for first article testing. Five bids were submitted; B-K and Riverport submitted the two lowest bids, as set out in an Appendix to this decision. Riverport submitted a single unit price for the overpacks and a price (\$250.00 each) for first article testing. B-K bid a price for first article testing (\$185,000.00 per unit) and two unit prices, one to be applied if first article testing was required and another to be applied if first article testing was waived.

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After bid opening, B-K notified the contracting officer that a mistake had been made and requested an opportunity to correct its bid. B-K explained that it had made an error in addition by inadvertently failing to add a \$7.00 item identified on its work papers. The item in question concerned the cost of plywood, wire and miscellaneous materials. B-K was allowed to correct its bid after the agency determined from the worksheets and supporting statements that the nature and existence of the mistake and the bid actually intended had been proven by clear and convincing evidence.

Riverport contends that the correction of B-K's bid was improper because it allowed B-K two opportunities to bid on the contract. Riverport questions B-K's evidence, which it does not find to be convincing. However, Riverport has not explained why it thinks this is so.

In our view, the Army acted properly in allowing correction of B-K's bid. A bid that would remain low after correction may be corrected where the bidder provides clear and convincing evidence of the existence of a mistake, the manner in which the mistake was made, and of the intended price. Butler Corp., B-212497, Oct. 31, 1983, 83-2 CPD ¶ 518. We have examined B-K's worksheets and the other evidence provided to the Army. The worksheets clearly show that B-K broke out the cost of the material in question but failed to add this cost when it calculated its unit cost for the 38,431 overpacks. Since B-K relied on its erroneously calculated unit cost to calculate its bid prices with and without first article testing, these prices were in error by similar amounts. In the circumstances, we agree with the Army that the evidence of the mistake, of how the mistake was made and of the amount of B-K's intended bid is clear and convincing. Therefore, this portion of the protest is denied.

Riverport also argues that B-K's bid should have been rejected because it was unbalanced. Riverport says that B-K bid \$185,000 each on the two first article units while other bids ranged from no charge to \$1,000 per unit. Also, B-K's bid on the 38,431 production units was low compared to the other bidders' prices. Riverport argues that B-K's bidding allows it "to receive payments for a substantial

portion of its contract prior to performing an equivalent amount of work under said contract." According to Riverport, this will result in a windfall for B-K and will deprive the government of the use of its funds earlier than would a more balanced bidding structure.

A bid to be rejected as unbalanced must be both mathematically and materially unbalanced. While a bid is said to be mathematically unbalanced if it does not carry its share of cost plus profit, it is materially unbalanced if, for example, there is reasonable doubt that award will not result in the lowest ultimate cost to the government. Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542. The Army correctly points out that B-K's overall bid offers the lowest cost and urges, therefore, that B-K's bid be viewed as not materially unbalanced.

We think, however, that when a bid is grossly unbalanced mathematically it should be viewed as materially unbalanced since acceptance of the bid would be tantamount to allowing an advance payment. Advance payments, that is payments made in advance of performance of work, are prohibited by 31 U.S.C. § 3324 (formerly 31 U.S.C. § 529), except as otherwise expressly authorized by law. 10 U.S.C. § 2307 (1982) allows the Secretary of the Army to make advance, partial, progress or other payments under contracts in cases where the contractor gives adequate security and the Secretary determines such action would be in the public interest. However, requests for advance payments generally must be separately approved under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 32.408 (1984).

In view of the significantly lower value placed on first articles by the other bidders, it is implausible on this record that first articles are worth anything like \$370,000. Since B-K's first article price is far in excess of the value of the first articles, its first article price does not appear to be related to the work required to produce first articles, but rather, appears to include a substantial additional payment. Accordingly, we think B-K's bid should have been rejected as unbalanced.

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We have been informed by the Army that first articles have been delivered and approved under B-K's contract and that delivery of production units has begun. Because the government has already incurred the cost of first article testing, contract termination and reprocurement at this time would only increase its costs and would not be in its best interests. Solon Automated Services, Inc., B-206449.2, Dec. 20, 1982, 82-2 CPD ¶ 548, aff'd, Crown Laundry and Dry Cleaners, Inc.; Solon Automated Services, Inc.--Reconsideration, B-206449.3, B-206449.4, Apr. 5, 1983, 83-1 CPD ¶ 355. Accordingly, while we will not recommend corrective action, we are by separate letter, bringing our concerns regarding the award of this contract to the attention of the Secretary of the Army.

The protest is sustained in part and denied in part.

for *Harry R. Van Cleave*
Comptroller General
of the United States

APPENDIX

	<u>B-K</u>	<u>Riverport</u>
	AS Submitted	AS Corrected
PRICING WITHOUT FIRST ARTICLES:		
Price per overpack:	16.70	23.70
TOTAL PRICE (38,431 units):	641,797.70	910,814.70
PRICING WITH FIRST ARTICLES:		
Price per overpack:	7.07	14.07
Subtotal price (38,431 units):	271,707.17	540,724.17
Unit price for first article testing:	185,000.00	185,000.00
Subtotal (price for 2 first articles):	370,000.00	370,000.00
TOTAL PRICE (38,431 units & first articles):	641,707.17	910,724.17
		1,023,148.91