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DECISION

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

FILE: B-218656.2 **DATE:** July 31, 1985

MATTER OF: Riverport Industries, Inc.--Request for Reconsideration

DIGEST:

Prior decision, which found that a grossly mathematically unbalanced bid should be rejected since acceptance of the bid would be tantamount to an advance payment, is affirmed.

The Department of the Army requests reconsideration of a portion of our decision in Riverport Industries, Inc., B-216707, Apr. 1, 1985, 64 Comp. Gen.____, 85-1 CPD ¶ 364, concerning the award of a contract to B-K Manufacturing Company, Inc. under invitation for bids (IFB) No. DAAH01-84-B-0090 issued by the United States Army Missile Command. In that decision, we held that the Army properly permitted B-K, the low bidder, to correct a mistake in its bid. We also held that B-K's bid was "grossly unbalanced mathematically" and should have been rejected because acceptance of a bid so structured was tantamount to allowing an advance payment. The Army questions the propriety and soundness of the latter determination by our Office. For the reasons that follow, we affirm our prior decision.

The IFB solicited bids to furnish 38,431 TOW Missile overpacks plus two units for first article testing. The two units required for first article testing were identical to the units to be delivered as production quantities, and the solicitation permitted these two first article units to be delivered to the government as contract end items if not destroyed during first article testing. B-K and Riverport, who was the next low bidder, bid as follows:

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	B-K	Riverport
PRICING WITHOUT FIRST ARTICLES:		
Unit price of production quantity (38,431 units)	$23.70	$26.61
PRICING WITH FIRST ARTICLES:		
Unit price of first article (2 each)	$185,000.00	$500.00
Unit price of production quantity (38,431 units)	$14.07	$26.61

B-K's bid of $185,000 each for the two first article units was more than 40 percent of its total bid. In contrast, the other bidders' prices for the first articles ranged from no charge to $1,000 per unit, which represented a very small percentage of their total bids. Riverport alleged that B-K's bidding scheme allowed it to receive payments for a substantial portion of its contract prior to performing an equivalent amount of work under the contract. We noted the general rule that while a bid is mathematically unbalanced if any item does not carry its share of cost plus profit, it is only materially unbalanced if there is a reasonable doubt that award will result in the lowest ultimate cost to the government. See Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542. We also held, however, that even if a bid offers the lowest cost to the government, where, as here, it is grossly unbalanced mathematically, it should be viewed as materially unbalanced since acceptance of the bid would be tantamount to allowing an advance payment.

The Army complains that we erroneously concluded that B-K's bid was grossly mathematically unbalanced and would result in a violation of the statutory prohibition on advance payments. The Army argues that the facts of this case do not justify changing our long-standing general rule for determining if a bid is materially unbalanced and argues that it is impossible to apply the new rule enunciated in our prior decision since solicitations containing multiple line items are often mathematically unbalanced to a substantial degree.

We do not agree with the Army that our conclusions were erroneous. First, we continue to believe that where a bid is as grossly unbalanced as B-K's bid is here, it should also be viewed as materially unbalanced. Further, although technically we could not and did not conclude that acceptance of the bid involved the government in a prohibited advance payment situation, we did conclude that the situation presented the same evils as one involving an advance payment.

The facts in this case are simple. The first articles, as customary, were simply initial production samples whose sole purpose was to ensure that the contractor could furnish the required items upon commencement of full production. See the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.302 (1984). Further, as noted above, the first articles were identical to the production quantity items, and, if not destroyed in first article testing, could be delivered as end items indistinguishable from subsequent production items. Thus, there should be no significant difference in the scope and nature of the work required to produce the first articles on one hand and the production quantity on the other. Moreover, even assuming that some degree of price differential between the first articles and the production quantity is justifiable, we simply find it unreasonable to conclude that the two first articles are worth anything like more than 40 percent of the total contract price. In this connection, as noted in our prior decision, the prices offered by the other bidders for the first articles in this case were significantly lower than B-K's price. While the Army considers this irrelevant, we think it is significant that the pricing structure in B-K's bid is completely out of line with the pricing structure of the four other bids submitted. See Crown Laundry and Dry Cleaners, Inc., B-208795.2, et al. supra.

Regarding the Army's concern that our prior decision will have a detrimental effect on solicitations with multiple bid items, we again note that this case involves two first articles priced at more than 40 percent of the total contract price for the first articles plus the production quantity of 38,431 identical units. Thus, we do not expect it to affect the vast majority of multiple line item solicitations as it will only apply where the bidding scheme, viewed as a whole, is grossly unbalanced mathematically.

Our prior decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States