



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Islip Transformer & Metal Co., Inc.
File: B-225257
Date: March 23, 1987

DIGEST

1. Low bid in which the unit price for the fabrication of first article test items was more than 36 times greater than the unit price for production items properly was rejected as materially unbalanced because award, in effect, would have resulted in an advance payment to the contractor since it would have provided funds early in the contract performance to which the contractor was not entitled on the basis of - payment for value received.
2. Consideration of a bid, including referral of low bidder to the Small Business Administration for consideration under certificate of competency (COC) procedures, and subsequent issuance of a COC, does not establish irrevocably that a bid is acceptable, nor does it estop the government from later rejecting the bid as nonresponsive.

DECISION

Islip Transformer & Metal Co., Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAD07-86-B-U655, issued by the Army for circuit card assemblies for the Fire Finder Radar System.

Islip asserts that its bid was improperly rejected on the basis of the Army's determination that Islip's high price for first article test units rendered the bid materially unbalanced. Islip asserts that this cannot support a non-responsiveness determination because Islip's bid previously had been found responsive, as a prerequisite to Islip's referral to the Small Business Administration (SBA), which had issued a certificate of competency (COC).

We deny the protest.

The IFB, issued on July 9, 1986, called for six items consisting of four contract line item numbers (CLINS) for the production of a total of 231 circuit card assembly units, plus one solicitation line item number (SLIN) for the fabrication of two preproduction units for first article testing, and a SLIN for first article testing and a test report. At bid opening on September 5, Islip's bid of \$125,939.90, including the two first article testing SLINS, was low, and Systems Integration Engineering Co.'s bid of \$141,980.23 was next low. Based on a preaward survey, the contracting officer determined that Islip, a small business, was nonresponsible, and referred the matter to the SBA for consideration under its COC procedures. SBA determined that Islip was responsible and issued a COC on October 16.

The Army states that on November 18, while preparing the contract for award to Islip, the contracting officer became aware that Islip's bid of \$30,000 for two units for the first article fabrication SLIN was disproportionate to Islip's production CLIN price of \$408.90 per unit. The contracting officer determined that Islip's bid was materially unbalanced because Islip's first article test fabrication unit price did not bear any reasonable relation to the actual costs and, therefore, rejected Islip's bid as nonresponsive. Islip protested this determination to our Office; award is being withheld pending resolution of the protest.

In determining that Islip's first article price was unbalanced, the Army considered that the first article was essentially only two preproduction units. Besides the total production cost for these units which is less than \$817.80 (based on \$408.90 per unit multiplied by two units), the only additional expense associated with the first article is that of refurbishing the two units to make them serviceable for designated use after the conclusion of testing, which the Army estimates will cost less than \$100. While Islip asserts that its two first article test units have to be delivered from a production lot of 15, the Army points out that the remaining 13 units were to be delivered and priced under a production CLIN. In this respect, the IFB specifically provides that:

"First article consists of two (2) units of [assemblies] manufactured IAW requirements cited for CLIN 0001. One (1) approved first article test unit shall be retained at contractor's plant for use as a reference by government QAR. First articles not required to be retained must be delivered as part of the final delivery. See Section C."

Section C, entitled "Fabrication of First Article" states:

"Include under this SLIN all charges for labor and materials and all other costs allocable to the fabrication of first article units. For units that will be delivered as part of the production quantity, only include cost over and above the costs covered by CLIN 0001. Include costs of refurbishment that may be required after testing, for acceptance as production quantity."

In response to Islip's initial contention that production costs and the cost of acquisition of material for units to be delivered subsequently under a production CLIN were allocable to the first article fabrication SLIN price, the Army report correctly points out that the above-quoted solicitation provisions explicitly prohibit such a practice. Rather, the provisions require that these costs be included in the production item price.

Islip has not responded in its comments on the agency report to this point; instead, it now argues that the Army could not disqualify Islip as nonresponsive because after bid opening the Army had referred Islip's nonresponsibility finding to the SBA for COC consideration. Islip contends that the Army's referral to SBA constituted an irrevocable determination that Islip's bid was responsive. This simply is not so. A contracting agency's referral of a matter to SBA for consideration under the COC procedures is not relevant to the question of whether the bid later properly can be rejected; a COC referral neither waives nonresponsiveness nor estops the agency from later rejecting a bid determined to be nonresponsive. Dean's Security Professionals, B-224429, July 31, 1986, 86-2 C.P.D. ¶ 132; Nebraska Aluminum Castings, Inc., B-222476, June 24, 1986, 86-1 C.P.D. ¶ 582. Thus, the Army was not foreclosed from considering the acceptability of Islip's bid subsequent to the issuance of the COC.

As to the acceptability of Islip's bid, we have held that where a bidder's pricing scheme grossly front-loads first article prices, this renders the bid materially unbalanced per se so as to require rejection of the bid as nonresponsive. Nebraska Aluminum Castings, Inc.--Second Request for Reconsideration, B-222476.3, Nov. 4, 1986, 86-2 C.P.D. ¶ 515; Edgewater Machine & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 C.P.D. ¶ 630. The rationale is that an award to a firm submitting greatly enhanced first article prices will provide funds to the firm early in the period of contract performance to which it is simply not entitled if payment is to be measured on the basis of the actual value of the first article (i.e., the legitimate costs associated with the production of the first article) and, therefore, presents the

same evils as a prohibited advance payment. Nebraska Aluminum Castings, Inc.--Second Request for Reconsideration, B-222476.3, supra; Riverport Industries, Inc.--Request for Reconsideration, B-218656.2, July 31, 1985, 85-2 C.P.D.
¶ 108.

Here, Islip's first article fabrication price of \$15,000 per unit is more than 36 times greater than its \$408.90 unit price for the production items. Islip's own initial argument that it had included in its first article fabrication price the cost of additional lot items which are to be delivered under a production items CLIN establishes that Islip's first article price was unreasonable because Islip was trying to recoup costs for production items as well as for first article items. These costs are for units which the agency will receive and pay for under the production CLIN and therefore are allocable to the production CLIN. By not so allocating these costs, Islip materially unbalanced its bid so that an award to Islip would have given it funds during the first article period which would have been essentially an interest-free loan from the government.

Islip has pointed out that the solicitation did not contain an express notice that unbalanced bidding was prohibited. However, we have held that even where the solicitation does not contain such express notice, the rejection of this kind of unbalanced bid is required in order to maintain the integrity of the competitive system. Nebraska Aluminum Castings, Inc.--Second Request for Reconsideration, B-222476.3, supra.

Islip also argues that its first article price is reasonable because it does not exceed a 25 percent limitation on progress payments prior to first article approval which is contained in section H-9 of the IFB. However, this provision is unrelated to the reasonableness of Islip's first article price. The provision merely sets a ceiling on progress payments prior to first article approval of the price for the first article, or 25 percent of the total contract price, whichever is less. Here, the record establishes that Islip's cost for the first article fabrication (only one of two first article SLINS) was substantially less than the \$30,000 price which Islip bid. Therefore, this clause would limit pre-approval progress payments to the sum of this lesser amount plus the price for the first article testing and test reports SLIN, and it does not establish the reasonableness of Islip's \$30,000 first article fabrication price.

The protest is denied.

for Seymour Efron
Harry R. Van Cleave
General Counsel