The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fidelity Technologies Corporation

File: B-232340

Date: November 23, 1988

DIGEST

Low bid in which the unit price for the fabrication of the first article test items was 238 times greater than the unit price for production items and included special tooling costs that would be used in the production quantity 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 contract performance to which the contractor was not entitled on the basis of value received.

DECISION

Fidelity Technologies Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAB07-88-B-U035, issued by the United States Army Communications-Electronics Command (CECOM). We deny the protest.

The IFB solicited bids to furnish 15,550 audio frequency amplifiers, 4 units for first article testing and associated technical data. Bidders were required to price the production units and the first article units separately. Fidelity was the low bidder with a total price of $172,050.50, consisting of $161,875.50 for the production units, $10,000 for the first article units, and $175 for associated data. Fidelity's unit price for the production items is $10.41. Fidelity's first article price of $10,000 consists of $9,925 (approximately $2,481 each) for fabrication of the four first article units, including special tooling costs; $25 for the first article test plan; and $50 for the first article test report. Because the first

043995 / 137415

article price is approximately 238 times1/ the production cost per unit and the protester included special tooling costs necessary for production in its first article pricing, the Army rejected Fidelity's bid as nonresponsive on the basis that it was materially unbalanced as to first article pricing.

An award to a firm submitting greatly enhanced first article prices will provide funds to the firm early in the period of contract performance--in essence, an interest-free loan--to which it is simply not entitled if payment is to be made on the basis of actual value received (i.e., the legitimate costs associated with the production and testing of the articles for acceptability). Nebraska Aluminum Castings, Inc., B-222476, June 24, 1986, 86-1 CPD ¶ 582, aff'd on reconsideration, B-222476.2, Sept. 23, 1986, 86-2 CPD ¶ 335. Thus, a bidding scheme which grossly front-loads first article prices as a device to obtain unauthorized contract financing renders the bid materially unbalanced per se so as to require its rejection as nonresponsive. Edgewater Machine & Fabricators, Inc., 65 Comp. Gen. 488 (1985), 85-2 CPD ¶ 630.

In assessing whether or not a first article price is improperly front-loaded, our Office will look to see if there is a significant difference in the scope and nature of the work required to produce the first articles on the one hand and the production items on the other. Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd on reconsideration, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108. Here, the four first articles are samples identical to the production units and will be used to ensure that the production items are conforming. In this regard, the solicitation provides that any first article unit that is not required to be retained for quality assurance purposes shall be delivered as part of the production items. Under these circumstances, we see no significant difference between the scope and nature of the work required for the first article and production units which would justify the gross disparity between the prices for the first article and production units.

1/ CECOM has referred to the first article prices as being approximately 248 times greater than the price of the production items while our calculations establish the amount to be approximately 238 times. Accordingly, we will use the 238 figure when referring to this amount.

The record establishes that approximately 90 percent of Fidelity's first article price consists of the cost of special tooling (a molded base, circuit boards and screws). Fidelity acknowledges that it included the special tooling cost in its first article price rather than amortizing it over the life of the contract. Fidelity asserts that inclusion of the special tooling cost in the first article pricing is reasonable because the special tooling must be acquired prior to starting production of the first article units. However, there is nothing in the record to indicate that the special tooling is limited solely to the fabrication of the first article units, and since the first article and production items are identical, the special tooling will also be used to produce the 15,550 production units. Accordingly, we agree with the Army that the special tooling costs should have been amortized over the life of the contract and by improperly including these costs in the first article pricing, Fidelity submitted a materially unbalanced bid. Nebraska Aluminum Castings, Inc., B-222476, supra.

As further support for its position that including the special tooling costs in the first article pricing is proper, Fidelity refers to the solicitation language relating to first article testing which instructs bidders to include all charges for labor and materials and all other costs allocable to the fabrication of first article units over and above costs covered by the production units. We fail to see how this provision endorses allocating to first article pricing costs that are directly related to performance of the entire contract, particularly since the solicitation specifically cautioned all bidders "that prices for first article units and testing should reflect only reasonable costs associated with producing and testing those units or [they would] run the risk of being rejected as unacceptable if [the] bid is found to be materially unbalanced."

Finally, we find without merit the protester's argument that its first article price is reasonable since it represents only 5.8 percent of the total contract price. With respect to first article pricing, the test for determining whether a bid is materially unbalanced is the extent to which the first article prices are reasonably related to the costs associated with production and testing of those units, not the percentage relationship of the first article price to the total contract price. Id.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel