

Mr. Spiegel



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dodge Romig Tex Corporation
File: B-241810
Date: March 5, 1991

Francis Louis Zarrilli, Esq., Zarrilli and Zarrilli, for the protester.
Michael Trovarelli, Esq., Office of the General Counsel, Defense Logistics Agency, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid, which contained unit prices of \$250 each for the two first article units and \$82 each for the 10,260 production units of survival vests, is responsive, even though the invitation for bids (IFB) did not request separate prices for first article units, since the bid unconditionally bound the bidder to provide all units in accordance with the terms of the IFB and the first article pricing is not grossly front-loaded.

DECISION

Dodge Romig Tex Corporation protests the award of a contract to Fabricated Technology, Inc., by the Defense Logistics Agency (DLA), Defense Personnel Support Center, under invitation for bids (IFB) No. DLA100-90-B-0434 for survival vests. Dodge contends Fabricated's low bid is nonresponsive.

We deny the protest.

On September 6, 1990, the IFB was issued with a bid opening date of October 9, 1990, for 6,012 survival vests with delivery to commence 195 days after contract award. While the IFB contained a first article testing requirement, there was no statement as to when delivery of the first articles would be required. This matter was covered in amendment 0001, issued on September 18, in which the first article delivery time was set at 90 calendar days following the contract date.

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Amendment 0002, issued on October 3, increased the production quantity to 10,260 and extended the bid opening date to October 16, 1990.

On October 16, 12 bids were received. On that date, Fabricated transmitted by facsimile a letter, which acknowledged the amendments and modified its previous submitted bid to price its production units at \$82.85 each and the two first articles at \$250 each. Fabricated's total bid of \$850,375.30 was low. Dodge's bid was second low, with a unit price of \$84.29 and a total price of \$864,815.40.

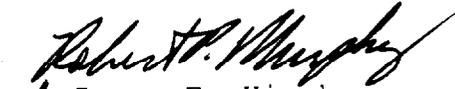
Dodge contends that Fabricated's bid is nonresponsive because its first article prices are different than its production unit prices, and this "injected a new, different, foreign term, condition, aspect, or item in[to] the IFB as issued."

The test to be applied in determining bid responsiveness is whether the bid, as submitted, is an offer to perform, without exception, the exact thing called for in the IFB, which, upon acceptance, will bind the contractor to perform in accordance with all the terms and conditions thereof. Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691. Here, while the IFB did not provide for separate pricing of the first article units, it did not prohibit it or contain any requirement that all units be priced the same. Fabricated's bid does not in any way imply that it would not perform the contract in complete accordance with the terms and conditions of the IFB, nor does it alter Fabricated's legal obligations to the government as required by the IFB. Fabricated unconditionally bound itself to provide both production and first articles units in accordance with the terms of the IFB and its bid was responsive. See Seaward Corp., B-237107.2, June 13, 1990, 90-1 CPD ¶ 552.

Nor can Fabricated's pricing of the first article units at \$250 each, as compared to its production unit price of \$82.85 each, be considered to be so grossly front-loaded, and in excess of the actual value of the units, to be considered tantamount to a prohibited advance payment, and require rejection of the bid. See Seaward Corp.--Recon., B-237107.3, Oct. 24, 1990, 90-2 CPD ¶ 324. Fabricated's first article unit prices for two units were only three times its unit

prices for 10,260 production units.^{1/} In addition, DLA obtained a cost breakdown of Fabricated's first article unit price, which indicated that Fabricated's actual cost for this item approximated \$250.

The protest is denied.


for James F. Hinchman
General Counsel

^{1/} This ratio is much less than in those cases where we have found bid prices to be so grossly front-loaded as to require rejection. See, e.g., Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd B-216656.2, July 31, 1985, 85-2 CPD ¶ 108 (where the first article unit prices were \$185,000 and the production unit prices were \$250); Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 CPD ¶ 327 (where the first article unit prices were \$15,000 and the production unit prices were \$408.90); Edgewater Machine & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630 (where the first article unit prices were \$125,000 and the production unit prices were \$301); Nebraska Aluminum Castings, Inc., B-222476, June 24, 1986, 86-1 CPD ¶ 582, aff'd B-222476.2, Sept. 23, 1986, 86-2 CPD ¶ 335, reaff'd, B-222476.3, Nov. 4, 1986, 86-2 CPD ¶ 515 (where the first article unit prices were \$22,510 and the production unit prices were \$19.17).