148456
J. Carter

Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of: Star Dynamic Corporation

File: B-248919.3, B-250459

Date: January 26, 1993

Patricia H. Wittie, Esq., Kirkpatrick & Lockhart, for the protester.
Catherine S. Anderson, Esq., and Craig E. Hodge, Esq., Department of the Army, for the agency.
John A. Carter, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected protester's bids where bids were grossly front-loaded with respect to first article pricing. Acceptance of similarly front-loaded bids in prior procurements does not impugn agency's rejection of bids in present procurements since an individual procurement must stand on its own.

2. Protest that amended first article provision did not expressly replace the solicitation's original first article provision requiring (according to the protester) front-loading of first article prices with preproduction costs is denied. First articles were part of production quantity and both original and amended versions of clause required that first article prices include only costs above and beyond costs of production quantity and neither version permitted front-loading first article prices with preproduction costs.

DECISION

Star Dynamic Corporation has filed two protests alleging that the Army Communications-Electronics Command (CECOM) improperly rejected Star's bids as materially unbalanced in two separate procurements. We deny the protests in part and dismiss them in part.

The first protest concerns a procurement conducted under invitation for bids (IFB) No. DAAB07-92-B-G504 for 30,557 radio antennas, with options for substantial additional quantities. The contractor was to produce four antennas for first article testing (FAT), all of which would ultimately be delivered with the production quantity. The IFB requested separate prices for the production units and for fabrication of the FAT units. The IFB advised that the price for fabricating FAT units that would be delivered as part of the production quantity should include only those costs that were above and beyond the costs of the production units, and warned that bids might be rejected if they were materially unbalanced.

There were 13 bidders for this contract. The two lowest bids were rejected; Star was third low. Star's unit prices for its FAT and production quantities were $72,250 and $164.75, respectively.

The second protest involves a procurement of 2,620 radar signal indicators, with an option for an additional like quantity, under IFB No. DAAB07-92-B-L301. The IFB required 12 units for FAT and stipulated that the units produced for FAT were to be refurbished, if necessary, and delivered as part of the production units. The IFB requested separate prices for production units and fabrication of the FAT units. Initially, the IFB stated that the FAT prices should include "all charges for labor and material [and] all other costs allocable to the fabrication of first article units that will be delivered as part of the production quantity. Only include costs over and above the costs covered by the [production units]." A subsequent amendment contained a new FAT provision that stated that the FAT price "should include only the price associated with performing the first article test and refurbishment of the twelve (12) units. The actual fabrication costs for these twelve (12) units shall be included [in the production units]." Star's unit prices for its FAT and production items were $12,666.66 and $523, respectively.

In both procurements, CECOM determined that Star's bids were materially unbalanced and rejected them as nonresponsive. CECOM noted that in the first procurement, Star's FAT price was 438 times the price of Star's production units and, in the second procurement, it was 24 times the price of the production units. CECOM concluded that Star's bids were grossly front-loaded and, therefore, materially unbalanced and nonresponsive.

Star asserts that CECOM's determinations were improper. Star argues that before rejecting its bids, CECOM should have weighed Star's prices in relation to the company's costs, and contends that CECOM failed to do so. Star also claims that the scope and nature of the work in producing FAT and production articles is different and that its FAT prices accurately reflect the substantially greater costs of fabricating FAT articles. In this regard, Star claims that the setup, material, labor and supervision costs of producing FAT articles are substantially greater than the costs of production items. Star also asserts that there is no statute or regulation requiring allocation of the costs of special tooling, fixtures, and special test equipment over all production units where those costs must be incurred to satisfy the agency's FAT requirements and the agency requires separate FAT pricing.

In assessing whether a bid is grossly front-loaded, we look to see if there is a significant difference between the scope and nature of the work required for the first articles and the production quantities. Microtech, Inc., B-225892, Apr. 29, 1987, 87-1 CPD ¶ 453. Where the FAT quantities are identical to and are part of the initial quantity to be delivered, there is no such significant difference. Id. Absent a significant difference, we view a bid that includes greatly enhanced first article prices as a device to obtain unauthorized contract financing, rendering the bid materially unbalanced per se, and requiring its rejection as nonresponsive. Fidelity Technologies Corp., B-232340, Nov. 23, 1988, 88-2 CPD ¶ 511.

Star's claim that the scope and nature of the work to produce FAT articles is substantially different from that for production items is an effort to draw a distinction between FAT and production that we do not believe exists in these two instances. In both of these procurements, the FAT articles were part of the production quantities. Star's suggestion, therefore, that the development of process, work, and test procedures necessary to initiate production was uniquely attributable to FAT is incongruous, since Star would have had to undertake similar preproduction efforts regardless of whether the agency procured FAT. Star should have amortized these costs over the production quantities. Instead, Star loaded all or most of the costs of preparing for manufacture of the total production quantity onto the first few articles, the FAT items.

In these circumstances, we agree with CECOM that Star's bid was grossly front-loaded.[1] Consequently, we also agree with CECOM that Star's bid was nonresponsive.

Star also complains that the amendment transmitting new FAT language to the IFB for radar signal indicators did not specifically state that the original FAT provision was to be deleted and replaced. Star contends that the original language in the IFB therefore was still effective and required that Star include all costs of fabricating the FAT articles in its FAT pricing.

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[1]We also note that CECOM did consider Star's costs, contrary to Star's contention. CECOM concluded that the costs of the FAT and production quantities should have been similar.

We disagree. The FAT articles were part of the production quantity and Star would have had to incur similar preproduction costs in order to initiate production, regardless of whether the agency procured FAT. Both versions of the clause limited FAT pricing to costs above and beyond production costs. Consequently, whether the original version of the clause was still in effect or not is irrelevant, since neither version permitted Front Loading FAT prices with preproduction costs. We therefore find no merit in this contention.

Finally, Star also contends that CECOM acted arbitrarily in determining that the ratios of FAT and production costs in these two procurements constituted front-loading when, in prior procurements, CECOM has awarded contracts to Star with higher or comparable ratios. CECOM's actions in prior procurements are, however, not relevant for our consideration of this case. The agency's acceptance of bids with similar discrepancies in prior procurements does not impugn the agency's rejection of these bids in these procurements, since each procurement must stand on its own. Southwest Marine, Inc., B-247639, May 12, 1992, 92-1 CPD ¶ 442. This contention is dismissed.

The protests are denied in part and dismissed in part.

for Seymour Efros
James F. Hinchman
General Counsel