

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

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FILE: B-183347

DATE: July 3, 1975

MATTER OF: Chu Associates, Incorporated

DIGEST:

Protest that specification is defective is untimely under bid protest procedures (4 C. F. R. § 20.2 (1974)) since it was not filed until after bid opening. Although protester questioned propriety of specifications in a telephone call to agency before bid opening, such action does not justify filing after bid opening since protester was advised, in effect, that agency regarded specifications to be adequate and that it did not intend to take further action in the matter.

Chu Associates, Inc., has protested against award of a contract under invitation for bids N0030-75-B-0112 issued by the Naval Electronic Systems Command on January 15, 1975. Basically, Chu contends that the specifications were ambiguous and therefore a common basis for bidding was precluded.

The record shows that prior to bid opening Chu pointed out its difficulties with the specifications in a telephone call to the Navy. Chu contends it was assured a solicitation modification would be forthcoming to clarify the matter. However, the Navy has advised this Office in a letter dated May 28, 1975, that it:

"* * * informed Chu that the instant specification requirements were in fact different in some areas from specifications previously employed. Further, Chu was notified that it should not concern itself with any specifications other than those set out in the instant solicitation. Chu was then informed that should there be any problems with the specifications set out in this solicitation that Chu should inform this Command immediately. No further inquiries were received at this Command from Chu Associates until after bid opening."

On the day after bid opening, Chu protested to the Navy and this Office.

Section 20.2(a) of our Interim Bid Protest Procedures and Standards (section 20.2(a) of Title 4 of the Code Federal Regulations) states in pertinent part:

BID ITEM NO. 1 Unit price per square foot based on repainting between 250,000 and 2 million square feet of in-place painting complete in accordance with the specifications.

\$.364

and

ENCLOSED BID GUARANTEE, CONSISTING OF
BID BOND \$15,000

On March 13, 1975, Monmouth advised the Navy that the \$.364 unit price was a "mistake" within the meaning of Armed Services Procurement Regulation (ASPR) § 2-406 (1974 ed.) and that the intended bid was \$.0364. Monmouth then protested to our Office against the award of the contract to any other bidder, because if Monmouth's bid were corrected, then it would be the low bidder.

Regarding mistakes in bids, ASPR § 2-406 (1974 ed.) states in part as follows:

"2-406 MISTAKES IN BIDS.

"2-406.2 Apparent Clerical Mistakes. Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. Examples of such apparent mistakes are: obvious error in placing decimal point;
* * *

"2-406.3 Other Mistakes.
(a) * * *

* * * * *

"(3) Where the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the

event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. * * *

Monmouth asserts that the error is an "apparent clerical mistake" consisting of an "obvious" error in misplacing the decimal point within the meaning of ASPR § 2-406.2. Monmouth states in support of its contention that:

"When all the bid documents are reviewed it is clear and convincing that the bid, as originally submitted by Monmouth Painting Co., Inc., contained an apparent clerical error. First and foremost in this consideration is the fact that Monmouth Painting Co., Inc. simultaneously with its bid form submitted a bid bond in the penal sum of \$15,000 which bound it and its surety to perform the contract at a price up to \$75,000. Clause 13 "Bid Guaranty" NAV FAC Form 4330/37 (6-72) of the Additional Instructions to Bidders (Construction Contract), required security in the sum of 20% of the amount bid.

* * * * *

"Inasmuch as the Government clearly indicated that there would be a minimum of 250,000 square feet of painting to be performed with a maximum of 2,000,000 square feet, an extension of the unit price, as originally submitted by Monmouth Painting Co., Inc., would have resulted in a bid price of between \$91,000 and \$728,000 dependent, of course, on the actual on-site needs. This seeming disparity between the bid bond amount and the unit price on the bid form should have put the Contracting Officer on notice to inquire. It was incumbent upon him to clarify the apparent contradiction at that time.

* * * * *

"The importance of the bid bond, to show the apparent clerical error, cannot be overlooked. Obviously a contractor would not provide a bid bond in the penal sum less than required. A bond in a lesser sum, viz: \$75,000 would be unresponsive if

the minimum extension would bring the price to between \$91,000 and \$728,000, based on an extension of the estimated quantities multiplied by the quoted uncorrected unit price."

For the reasons stated below, we do not think Monmouth's allegation of error properly may be considered as an "apparent clerical mistake" consisting of an "obvious error in placing decimal point." ASPR § 2-406.2 (1974 ed.).

As illustrated by the situation considered in our decision at 17 Comp. Gen. 339 (1937), a decimal point error is "obvious" when a bidder's total price is either one-tenth of or ten times greater than the product of its unit price multiplied by the definite quantity of units being bought. However, in the instant case, a comparison of unit and extended prices cannot be made, because the IFB requested bidders to submit only a "unit price per square foot based on repainting between 250,000 and 2 million square feet * * *."

Monmouth argues that the alleged decimal point error is obvious because its bid bond would be insufficient to support an award at the unit price set forth in its bid. We have considered the amount of a bid bond or bid deposit as one factor in determining whether the error occurred in the unit or total price. For example, in B-158823, April 13, 1966, the sole bidder offered \$.236 per pound for 240,000 pounds of bone and meat trimmings, which when extended should have totaled \$56,640. However, the bidder had entered a total price of \$5,664, one-tenth that amount, and had submitted a bid deposit of \$1,132.80, which was precisely the required 20 percent of \$5,664. Under these circumstances, we concluded that an obvious decimal point error had occurred in the unit price, and permitted modification of the contract to reflect an intended unit price of \$.0236, in lieu of \$.236.

In the present case, Monmouth submitted a bid bond of \$15,000, which would support an award up to \$75,000. If Monmouth's allegedly intended unit price of \$.0364 is multiplied by the maximum estimated 2 million square feet, the product is \$72,800, which is within the limits of its bid bond. Although this circumstance indicates that an error may have been made in the unit price, unlike B-158828, supra, there is not such a precise relationship between the amount of the bid bond and price nor a total bid price such as to support the conclusion that an obvious decimal point error occurred.

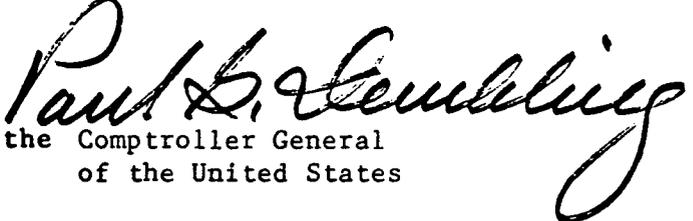
Since ASPR § 2-406.2 (1974 ed.) is not applicable to this case, the question is then presented as to whether relief may be granted under ASPR § 2-406.3 (1974 ed.) governing bid mistakes other than "apparent clerical mistakes." Correction, if allowed, would displace the lowest bidder. In these circumstances, we have held, and ASPR

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§ 2-406.3 (1974 ed.) provides, that correction is not allowable unless "the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself". 50 Comp. Gen. 497 (1971).

Monmouth's unit price was approximately 10 times higher than the lowest bid, seven times that of the Government estimate, and more than twice that of the next highest bid. These circumstances only serve to place the contracting officer on notice of the possibility of error in Monmouth's bid. The existence of the error and the bid actually intended must be established substantially from the invitation and the Monmouth bid, since other bidders would be displaced. 40 Comp. Gen. 321, 323 (1960). We find no such evidence, nor can Monmouth's allegedly intended bid be derived from the invitation and bid itself.

We conclude, therefore, that Monmouth's bid reflects neither an "apparent clerical mistake" nor one in which the existence of a mistake and the bid actually intended can be ascertained from the invitation and bid itself. The requested correction would be improper and the protest is accordingly denied.


For the Comptroller General
of the United States