

DECISION



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

FILE: B-186152

DATE: August 10, 1976

MATTER OF: Reiter-Compton Trucks

67319
98706

DIGEST:

When agency requests bidder to verify discrepancy between unit and extended prices, and bidder verifies accuracy of its extended prices, award should not have been made to bidder on basis of its unit prices. Accordingly, request for refund of sum withheld as liquidated damages is granted.

Reiter-Compton Trucks (Reiter-Compton) has requested a refund of \$301 representing liquidated damages retained by the Defense Supply Agency, Defense Property Disposal Service (DPDS) in connection with separate sales of personal property.

In response to Sale No. 60-6021, issued by the DPDS Hawaii sales office, Reiter-Compton forwarded bids on numerous items, including Item Nos. 163, 164, and 165, described in the sales offering as follows:

- "163. PROTECTOR, COLLECTIVE:
Inside - Packed - In wooden crates
* * *
- 5 EACH
- "164. PROTECTOR, COLLECTIVE: Same
description as Item 163, except:
Unpacked - In wooden crate
* * *
- 1 EACH
- "165. PROTECTOR, COLLECTIVE: Same
description as Item 163, except:
Unpacked
* * *
- 1 EACH"

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Reiter-Compton's bid on these items is summarized as follows:

<u>Item No.</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
163	5	\$196.00	\$196.00
164	1	\$196.00	\$196.00
165	1	\$196.00	\$196.00

Noticing that Reiter-Compton was offering in Item No. 163 a total price of \$196.00 for five adapters at \$196.00 each, DPDS contacted Reiter-Compton to clarify the discrepancy. By letter of December 8, 1975, Reiter-Compton advised that the unit price for Item No. 163 was incorrect and that the extended price of \$196.00 was the intended bid for all five items. Use of Reiter-Compton's unit price bid of \$196.00 (totaling \$980.00) would make it the high bid for Item No. 163.

Pursuant to Sale No. 41-6184, issued by the DPDS, Ogden, Utah, sales office, Reiter-Compton bid on many items, including Item Nos. 198, 199, 200, and 201, described in the sales offering as follows:

"198. ADAPTER, PALLET, METAL:

* * *

30 EACH

"199. ADAPTER, PALLET, METAL: Same description and contract provisions as Item 198

150 EACH

"200. ADAPTER, PALLET, METAL: Same description and contract provisions as Item 198

272 EACH

"201. ADAPTER, PALLET, METAL: Same description and contract provisions as Item 198

449 EACH"

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Reiter-Compton's bid on these items is summarized as follows:

<u>Item No.</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
198	30	\$.60	\$18.00
199	150	\$.60	\$18.00
200	272	\$.60	\$18.00
201	499	\$.60	\$18.00

The contracting officer, noticing that only in Item No. 198, did the quantity of items at the stated unit price equal the stated extended price, contacted Reiter-Compton to request clarification of the mathematical discrepancies in Item Nos. 199, 200, and 201. The administrative report indicates that in a telephone conversation of November 25, 1975, Reiter-Compton confirmed the unit prices bid on all the questioned items. However, by letter dated December 2, 1975, Reiter-Compton stated that it had intended to bid the extended prices and not the unit prices on Item Nos. 199, 200, and 201. It is noted that use of Reiter-Compton's unit price bid of \$.60 for each of these three items (totaling \$90.00, \$163.20, and \$299.40 respectively) would make Reiter-Compton the high bidder for these items.

There is no question that mistakes were made in the bids; errors are patent on the face of the documents. For instance, it is not possible for the 272 adapters at \$.60 each of Item No. 200 of Sale No. 41-6184 to total \$18.00. Either the \$.60 or the \$18.00 figure must be incorrect. Upon the Government's request for clarification, Reiter-Compton responded that the extended amounts were to govern, but submitted no worksheets or evidence of the bid intended. DPDS has refused to accept Reiter-Compton's statements, asserting that all the facts point to Reiter-Compton's original intention of using the unit figures and that Reiter-Compton failed to disprove the possibility that the unit prices were in fact intended. Accordingly, DPDS has awarded contracts to Reiter-Compton based on its unit prices for these items.

DPDS asserts that numerous facts indicate that Reiter-Compton intended the unit prices to govern. DPDS cites the fact that Reiter-Compton accepted award and duly purchased Item Nos. 164 and 198, wherein the unit prices corresponded with the extended

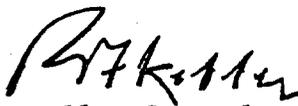
prices, "yet refused awards at the same unit prices of larger quantities of identical property," as evidence that Reiter-Compton intended the unit price as its bid. DPDS finds further evidence of Reiter-Compton's intention to use the unit prices in "the fact that Reiter-Compton initially confirmed the correctness of the unit bids * * * [in Sale No. 41-6184] but then a week later confirmed its total bid prices as the bids intended * * *." The agency states that:

"Inasmuch as R-C did not substantiate or explain these bid calculations, DPDS concluded that there was no clear and convincing evidence of mistake in the unit prices bid and awarded contracts to R-C on this basis under both solicitations."

Reiter-Compton objects that DPDS has "arbitrarily" elected to use a bid price that Reiter-Compton did not intend to offer. The protester questions how DPDS could "ask us which bid we intended and then decided exactly contrary to our expressed intention." Furthermore, Reiter-Compton cites the fact that it computed its bid deposit in accordance with its "total price" bid as proof that the total, or extended, price was actually the price intended.

We believe that Reiter-Compton should have been permitted to withdraw its bids on the disputed items. The agency maintains that the bidder did not offer clear and convincing evidence of mistake in its unit prices. It is clear, however, that bid mistakes were made. In this connection we note that chapter 12, page 36, paragraph P, of Department of Defense Disposal Manual, DOD 4160.21-M (1973 ed.) provides that "An error in extension of prices [in a bid] may not be corrected without requesting verification from the bidder unless the difference is comparatively minor". Here the difference was not minor and the bidder did not verify the accuracy of its unit prices. Under the circumstances, we believe the agency should have permitted Reiter-Compton to withdraw its bids on the disputed items.

Accordingly, Reiter-Compton's request for refund of liquidated damages should be allowed.


Deputy Comptroller General
of the United States