

DOCUMENT RESUME

01648 - [A1051851]

[Protests against Letter Bid and Bid Correction]. B-188001.
March 31, 1977. 6 pp.

Decision re: Trenton Industries, Inc.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army

Tank-Automotive Materiel Readiness Command, Warren, MI;

Check-Mate Industries, Inc.

Authority: 18 U.S.C. 1001. A.S.P.R. 2-301(c). A.S.P.R. 2-406.4.

A.S.P.R. 3-807.3. 49 Comp. Gen. 480. 49 Comp. Gen. 482. 51

Comp. Gen. 503. 51 Comp. Gen. 505. 52 Comp. Gen. 232. 52

Comp. Gen. 235. 53 Comp. Gen. 232. 53 Comp. Gen. 235-6.

B-187042 (1976).

Bidder protested agency's permitting awardee to correct bid for drain plug wrenches by letter. Regulations permit both letter bid and bid correction of price. Work sheets and DD Form 633 submitted clearly showed error in multiplication. No prejudice resulted, so not giving protester opportunity to extend its bid acceptance period was of no consequence. The protest was denied. (DJH)

01648

DECISION



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

Richard Feldman

DC. II
GENERAL

FILE: B-188001

DATE: March 31, 1977

MATTER OF: Trenton Industries

DIGEST:

1. A letter bid may be considered for award if the bidder accepts all the terms and conditions of the solicitation and acceptance of the bid would result in a binding contract. ASPR 2-301(c) (1976 ed.).
2. Command Counsel for the U.S. Army Materiel Development and Readiness Command is proper delegated authority to determine for that Command if bid error can be corrected. ASPR 2-406.3 (b)(1).
3. Worksheets of bidder constitute clear and convincing evidence of mistake in bid if they are in good order and indicate the intended bid price. GAO will not question a factual determination as to the weight of the evidence permitting correction unless there is no reasonable basis for such determination.
4. DD Form 633, which has been predated and furnished as evidence of direct costs, labor and associated burdens for procurement will not be questioned where it is obvious that form normally would not have been prepared for subject procurement, contractor freely admits predating form and agency did not consider such form in making its determination on whether to allow correction of bid. Moreover, independent review of evidence of mistake by proper authority under ASPR and by GAO protects against fraud.
5. When no prejudicial results, it is of no consequence that the protester (next lowest bidder) was not given an opportunity to extend its bid acceptance period.

Trenton Industries, Inc. (Trenton) protests the decision by the U.S. Army Tank Automotive Materiel Readiness Command (USA-TARCOM) to permit Check-Mate Industries, Inc. (Check-Mate) to correct a mistake in its bid and the subsequent award to Check-Mate.

B-188001

Invitation for bids (IFB) No. DAAE07-76-B-2607 was issued on June 4, 1976, by USA-TARCOM for the procurement of 6,314 drain plug wrenches. Ten bids were received on the opening date of June 30, 1976. Check-Mate was low bidder at \$2.68 each and Trenton was second low bidder at \$3.19 each. After bid opening Check-Mate alleged a mistake in bid indicating their unit price should have been \$3.02 each instead of \$2.68 each. In a letter dated July 14, 1976, Check-Mate explained its error:

"The error came about in the extension of 351.0 hrs. by \$12.00 per hour. The result of this extension was \$2,300.00, which is in error. The correct figure should have been \$4,212.00."

"Using the correct labor figure our Bid Price should have been a unit price of \$3.02 for a total amount of \$19,068.28. We are attaching a copy of our original estimate sheet for your review."

Check-Mate, as requested by USA-TARCOM, submitted documentation in support of the alleged mistake. This documentation included Check-Mate's original worksheet and DD Form 633 dated June 25, 1976. Check-Mate subsequently informed USA-TARCOM that this DD Form 633 was actually prepared in August 1976, but was dated June 25, 1976, to maintain continuity of events. This evidence together with the contracting officer's statement was submitted to the Command Counsel of the U.S. Army Materiel Development & Readiness Command (USA-DARCOM) to determine if Check-Mate should be permitted to correct its mistake. Command Counsel, USA-DARCOM, responded with an Administrative Determination authorizing Check-Mate to correct its bid from \$2.68 each to \$3.02 each. Award was made to Check-Mate on November 24, 1976.

The grounds for Trenton's protest are essentially the following: (1) The letter bid submitted by Check-Mate was improper and should not have been considered, (2) The agency lacked authority to permit correction of the bid, (3) Due to the mistake in Check-Mate's bid, the procuring activity should have permitted only withdrawal not correction, (4) since DD Form 633 was antedated to June 25, 1976, there is doubt as to its authenticity and as to the authenticity of the original worksheet, and (5) Trenton was not given the opportunity to extend its bid acceptance period as provided by regulation.

ASPR 2-301(c) (1976 ed.) permits the consideration of a letter bid if the bidder accepts all the terms and conditions of the invitation and acceptance of the bid would result in a binding contract. In its letter bid of June 25, 1976, Check-Mate expressly

B-188001

indicated that it accepted and understood all of the terms and conditions of the IFB. Therefore, Check-Mate's letter bid was properly considered for award notwithstanding its failure to use the standard bidding form.

TARCOM referred the case and supporting evidence to Command Counsel DARCOM to determine whether Check-Mate should be allowed to correct its mistake. ASPR 2-406.3(b)(1) (1976 ed.) provides that the General Counsel (recently redesignated the Command Counsel) of the U.S. Army Materiel Command (recently renamed the U.S. Army Materiel Development and Readiness Command) may be delegated the authority to make such a determination. In fact, Command Counsel has been delegated such authority. Army Procurement Procedure 2-406.3(b) (1976 ed.). Consequently, we find that TARCOM fully complied with ASPR and thus the authority of the Command Counsel is without doubt.

Our Office consistently has held that to permit correction of an error in bid prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. 49 Comp. Gen. 480, 482 (1970); 51 id. 503, 505 (1972). These same basic requirements for the correction of a bid are found in ASPR 2-406.3 (a)(3) (1976 ed.) which provides:

When 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. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

In the present case, after consideration of the evidence submitted in support of the alleged error, the Command Counsel, DARCOM found:

"3. A review of the bidder's Manufacturers Estimate Summary Sheet discloses how the bidder arrived at his mistaken bid price. The sheet has three categories consisting of Purchase Costs--\$10,607.52, Labor Costs--\$2300.00 and Tooling Costs--\$2500 for a total of \$15,407.52. To this sum was added a 10% Profit factor amounting to \$1540.70 for a total of \$16,948.22. When this total is divided by the 6,314 units it results in the mistaken bid price of \$2.68 which was submitted. When the correct extension tooling cost of \$4212 is used, it results in a unit cost of \$3.02 which is what Check-Mate states was their intended bid price. From this it is apparent that there was an arithmetical error in computing the cost for tooling. This information, therefore, is clear and convincing evidence that there was a mistake in Check-Mate's original bid price. It is also clear and convincing evidence of the bid price actually intended at the time of the original bid submission. Since Check-Mate's intended bid price will not displace the other bidders, the mistaken bid may be corrected."

We note that the worksheet in this case showed a computational error in multiplying the labor rate of \$12.00 per hour times 351 hours to perform the work.

As indicated above, ASPR 2-406.3(a)(3) permits the correction of a bid if the bidder can show by clear and convincing evidence the existence of a mistake and the bid actually intended. Moreover, the rule that the existence of a mistake, and intended bid, are required to be shown on the face of the bid is limited to cases in which displacement of a lower bidder would occur if downward correction is permitted. See ASPR 2-406.3(a)(3). Withdrawal of a bid is proper in certain circumstances. See ASPR 2-406.3(a)(1), (3) (1976 ed.). Since displacement of a lower bidder is not involved in this case, the nature and extent of the error may be established from the bidder's work sheets.

Our Office has found work sheets in themselves to be clear and convincing evidence, if they are in good order and indicate the intended bid price as long as there is no contravening evidence. See B-173031, September 17, 1971; B-176900, November 29, 1972. In the instant case, the worksheet bears the initials of the vice-president and clearly shows the intended bid price. Command Counsel, DARCOM, relied on th's worksheet in making the determination to allow correction and our Office will not question a factual determination

B-188001

as to the weight of the evidence permitting correction, unless there is no reasonable basis for such determination. 53 Comp. Gen. 232, 235 (1973), Hoyer Construction Company; B-187042, September 29, 1976, 76-2 CPD 296. Accordingly where the procedures as outlined above are strictly followed so that the integrity of the bidding system is not prejudiced the United States should have the cost benefit of the bid as corrected, provided it is still lower than any other bid submitted. See 53 Comp. Gen. 232, 236 (1973).

Trenton questions the authenticity of a DD Form 633 submitted by Check-Mate as witness to its direct costs, labor and associated burdens for the procurement in question. Trenton also questions the authenticity of Check-Mate's worksheet. It is uncontroverted and freely admitted by Check-Mate that DD Form 633 dated June 25, 1976, was actually prepared in August, 1976. It is obvious that this form normally would not have been prepared for the subject advertised procurement because, as stated on the form, it is for use when submission of cost or pricing data is required pursuant to ASPR 3-807.3 (1976 ed.), which, of course, was not the case here. Moreover, it is clear from the record that DD Form 633 dated June 25, 1976, was not considered as evidence of Check-Mate's mistake or intended bid price. The only evidence of mistake that was considered by the Command Counsel was Check-Mate's Manufacturer's Estimate Sheet dated June 16, 1976. There is no evidence of an intent to deceive, and any fraud flowing from a decision allowing correction in this case is protected against by the high standard of proof necessary before correction is authorized and the independent review of the submitted evidence by an appropriate higher authority such as DARCOM. See 53 Comp. Gen., supra at 236. Nothing prevents the submission of such cases, as has been done here, to GAO for our decision. See ASPR 2-406.3(f) (1976 ed.). Moreover, the falsification of records is a criminal offense and would be subject to penalty prescribed in 18 U.S.C. 1001 (1970). See Hoyer Construction Co., Inc., B-187042, September 29, 1976, 76-2 CPD 296.

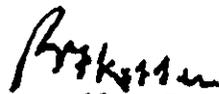
Trenton also questions the composition of the labor rate as reflected by DD Form 633 and a possible error in that rate which is indicated by a memorandum of a TARCUM price analyst. For the reasons stated above, any computations or information contained on DD Form 633 are irrelevant, since this form was not necessary to permit correction of Check-Mate's mistake.

B-188001

We note that Trenton was not given an opportunity to extend its bid acceptance period in accordance with ASPR 2-406.3(a)(1). However, Trenton was not prejudiced in this regard since the failure to extend Trenton's bid acceptance period had no effect on the standing of the bidders and would not affect the award as made to Check-Mate.

In view of the foregoing, the protest is denied.

Deputy


Comptroller General
of the United States

L L

L

L L