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**DECISION**



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

**FILE: B-190355**

**DATE: March 8, 1978**

**MATTER OF: Sta-Dri Company, Inc.**

**DIGEST:**

Where bidder, after bid opening, advises contracting officer of error in bid and requests withdrawal of bid but later retracts request, bid should have been disregarded, because it is not certain bid would remain low if corrected and to waive error would prejudice other bidders.

Sta-Dri Company, Inc. (SDI), has protested the award of a contract to Burg-Miller Tuckpointing, Inc. (B-M), under invitation for bids No. DAKF49-77-B-0117 issued by Fort Sam Houston, Texas.

The IFB was a 100-percent small business set-aside for cleaning, tuckpointing, replacing and sealing the exterior masonry walls of a structure at Fort Sam Houston. Eleven bids were received in response to the IFB with the low bid submitted by B-M in the amount of \$142,460. SDI's bid of \$220,000 was the second low bid and the Government estimate was \$302,580.

The contracting officer requested verification of B-M's bid due to the discrepancy between the bid, the next low bid and the Government estimate. By letter of September 15, 1977, B-M noted the following regarding its bid:

"In re-checking our prices on the bid for the above project, we found that a large error had been made in computing our prices for the total item No. 0002.

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"On the blueprints, General Note No. 2, it states to 'cut out and tuckpoint all limestone joints as specified in TP-3, Masonry Repair\* \* \*'. Our price for all the Number 2's on the prints were computed using this note, not the correct one which appears under Reference Note No. 2 stating 'Check area for stones needing face replacement.' We feel that we could not modify our bid due to the vast difference between tuckpointing only and stone replacement in all these areas.

"I hereby request permission to withdraw the bid on the basis of this mistake. I certify that the mistake was made in this manner, that it was unintentional, and we sincerely regret that this oversight occurred."

Because the September 19, 1977, letter did not contain the necessary documentation, such as worksheets or file copy of the bid, the contracting officer contacted B-M and requested such evidence to establish the existence of the mistake and the manner in which it was made. B-M advised that all computations were on the drawings and it would be difficult to submit the required evidence and that it was reconsidering its request to withdraw the bid. By letter of September 21, 1977, B-M advised the contracting officer as follows:

"Pursuant to our phone conversation, we hereby withdraw our letter of September 19, 1977, and acknowledge our original bid of \$142,460.00.

"It is not, and has never been, the policy of this Corporation to withdraw a bid. We feel that a first class job, as per specifications, can be accomplished with our bid, and look forward to working with you on this."

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Based on this correspondence, the contracting officer conducted a proaward survey and found B-M to be responsible and award was made to B-M.

SDI's protest is initially based on the contentions that B-M's bid contains such a substantial mistake that it cannot properly perform the contract at its bid price and that the bid had been withdrawn by B-M after bid opening in violation of section 2-303 of the Armed Services Procurement Regulation (ASPR) (1976 ed.).

Concerning the first contention that B-M's bid is too low to properly perform the contract, our Office has held that an award may not be withheld merely because the low bid is below cost. Oneida Chemical Company, Inc., et al., 53 Comp. Gen. 597 (1974), 74-1 CPD 73.

Regarding ASPR § 2-303, we believe this section is not applicable to the instant factual situation. ASPR § 2-303 concerns late bids and requests to withdraw a bid prior to bid opening which are received after bid opening.

ASPR § 2-406 (1976 ed.), Mistakes in Bids, is controlling here. Based on this regulation and past decisions of our Office, we find the bid of B-M was improperly accepted.

There is no dispute in the record that B-M made an error in its bid, as acknowledged by its letter of September 19, 1977. Two days later, B-M advised the contracting officer that it did not wish to withdraw its bid and desired the award at its quoted bid price.

ASPR § 2-406.3(e)(2) reads as follows:

"(2) When the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the

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bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented."

The critical test, as discussed in past decisions of our Office, is whether the bid would remain low with or without the correction. Where a bidder is unable to establish his intended bid price but it is doubtful that the intended bid would remain low, waiver of the mistake and award on the bid as submitted would be prejudicial to other bidders. 42 Comp. Gen. 723 (1963) and Jack Austin and Associates, et al., B-181035, June 14, 1974, 74-1 CPD 326.

The overriding consideration in this type of case is the preservation of the integrity of the competitive bidding system. Where a bidder, whether intentionally or not, is in the position, after the other bid prices have been revealed, of withdrawing its bid, asking for correction or requesting waiver of an error, whichever is in the bidder's best interest, consideration of that bid would be detrimental to the Federal Procurement system. 51 Comp. Gen. 498 (1972).

The IFB solicited bids on two items of work. The error in B-M's bid was with regard to item 2. Following is a breakdown of the bids of B-M and SDI and the Government estimate.

	<u>Item 1</u>	<u>Item 2</u>	<u>Total</u>
B-M	\$85,476	\$ 56,984	\$142,460
SDI	40,000	180,000	220,000
Government Estimate	35,260	267,320	302,580

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The other nine bids received all had item 1 priced at \$100,000 or less and item 2 was \$147,000 or more.

Therefore, we find it is not certain that B-M's bid would have remained low if corrected and when B-M failed to submit data to substantiate its intended bid the contracting officer should have disregarded B-M's bid because of the possible prejudice to the other bidders.

Because of the status of the contract performance, it is not feasible nor in the best interest of the Government to recommend termination of B-M's contract. However, by separate letter of today, we are recommending to the Secretary of the Army that steps be taken to avoid a recurrence of this procurement shortcoming in the future.

Deputy

*R. G. Kettner*  
Comptroller General  
of the United States



James Vickers

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

IN REPLY  
REFER TO

B-190355

March 8, 1978

The Honorable  
The Secretary of the Army

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the matter of Sta-Dri Company, Inc. (B-190355), in which we sustained the protest under invitation for bids No. DAKF49-77-B-0117 issued by Fort Sam Houston, Texas.

As noted in the decision, the acceptance of the bid of Burg-Miller Tuckpointing, Inc., was prejudicial to other bidders where there was no assurance that the bid would have remained low if the error in the bid had been corrected.

Accordingly, we recommend that steps be taken to prevent a recurrence of this shortcoming in future procurements and we would like to be advised of the action taken.

Sincerely yours,

Deputy

*R. G. Kettner*  
Comptroller General  
of the United States

Enclosure