

DECISION

*P. Jannicelli
Proctor*

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

7794

FILE: B-192346

DATE: September 25, 1978

MATTER OF: E. Walters & Company, Inc.

DIGEST:

Request for upward correction of alleged erroneous bid is denied, since original bid price was based on entirely different process from process proposed with request for correction. Correction cannot be allowed since it requires recalculation of bid to include factor not originally considered by bidder.

Pursuant to a mistake in bid alleged before award, E. Walters & Company, Inc. (E. Walters), requests an upward correction of its bid under invitation for bids (IFB) DAAK10-78-B-0075, issued by the United States Army Armament Research and Development Command (AARADCOM), Dover, New Jersey, on April 14, 1978.

Bids were opened on June 9, 1978, and E. Walters was the low bidder. Evaluation of bids by AARADCOM revealed that E. Walters' bid was considerably below the other five bids received and alerted the contracting officer to the possibility of a mistake in E. Walters' bid. On June 12, 1978, the contracting officer requested that E. Walters verify its bid in light of the possibility of error in accordance with paragraph 2-406.1 of the Armed Services Procurement Regulation (ASPR) (1976 ed.). By letter of June 21, 1978, E. Walters stated that it had made a mistake in its bid and requested permission to either correct the mistake or withdraw the bid in accordance with ASPR § 2-406.3 (1976 ed.).

E. Walters alleged that the mistake was caused by an ambiguity in paragraph 4.4.2.6 of military specification MIL-C-63239(AR) which was incorporated into the IFB. Specifically, E. Walters argued that paragraph 4.4.2.6, dealing with classification of defects and quality control tests, was misleading

because it did not list an "acceptable quality level" (AQL) for item 102, "Propellant [sic] weight." E. Walters alleged that its engineer, therefore, looked at other classification of defect sheets in specification MIL-C-63239(AR) and assumed that because other major defectives were at an AQL of 0.40 percent, the propellant weight check should also be on an AQL of 0.40 percent. Upon reexamining its bid, E. Walters discovered that paragraph 4.4.3.1 of specification MIL-C-63239(AR) required the propellant weight to be checked at 100 percent rather than the 40 percent upon which E. Walters had based its bid. E. Walters indicated that its bid had been based in part on the use of the Standard Camdex Automatic Reloading Machine to check propellant weight. However, E. Walters determined that rechecking the propellant weight at 100 percent would make use of the Standard Camdex Automatic Reloading Machine unfeasible and that a manual operation would have to be employed instead at an additional cost of \$286,247.

The Command Counsel, Headquarters, United States Army Materiel Development and Readiness Command, determined on July 26, 1978, that under these circumstances, E. Walters should be allowed to withdraw its bid but that no upward correction should be allowed. E. Walters has requested that our Office allow an upward correction in the amount of \$286,247 in view of the fact that no other bid would be displaced and the Government would still save \$289,446 by not awarding to the next low bidder.

Concerning E. Walters' allegation that paragraph 4.4.2.6 of specification MIL-C-63239(AR) was ambiguous, causing E. Walters to speculate as to the required AQL, examination of paragraph 4.4.2.6 shows that the column captioned "AQL or 100%" was left blank opposite major defective 102. However, the chart referred bidders to paragraph 4.4.3.1 for information regarding the method of inspection to be used for checking propellant weight. Paragraph 4.4.3.1 clearly indicated that the propellant weight should be determined and "check weighed 100 percent." In these circumstances, we believe it unreasonable for E. Walters to have assumed that an AQL of 0.40 percent applied to propellant weight merely because the other major defectives listed had an AQL of 0.40 percent.

Moreover, regarding alleged mistakes in bids, our Office has consistently held that to permit correction before award, where a bidder will not be displaced as a result of that correction, the bidder desiring the correction must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. Mechanical Constructors, Inc., B-189423, January 24, 1978, 78-1 CPD 60. E. Walters cannot be allowed to correct its bid since it has not shown clear evidence of what its intended bid would have been but for the mistake. Upon discovery of its error, E. Walters also determined that the inspection process it originally intended to use, the Standard Camdex Automatic Reloading Machine, was no longer feasible. In its request for correction, E. Walters indicates that the new bid price is based upon an entirely different inspection process which includes manual labor at an increase in cost. The rule which allows bid correction upon the establishment of mistake and the intended bid does not extend to situations where the bidder discovers previously omitted factors which affect its bid price after the bid has been submitted and opened. Accordingly, we cannot allow E. Walters to recalculate its bid to include a factor, manual weighing of propellant, which was not contemplated by it in the calculation of its original bid. See General Elevator Company, Inc., B-190605, January 31, 1978, 78-1 CPD 81.

Accordingly, E. Walters' request that we allow upward correction of its bid in the amount of \$286,247 is denied. We would interpose no objection to permitting withdrawal of its bid.

R. F. Keller
Acting Comptroller General
of the United States