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DECISION



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

D. Bellard
Long

FILE: B-192601

DATE: October 19, 1978

MATTER OF: Potomac Industrial Trucks, Inc.

DIGEST:

1. Bidder who, after award, alleges mistake in bid on basis of omission of component parts in price, may have contract rescinded, even though disparity in bid prices is small, because contracting officer was on constructive notice of separate pricing for components by other bidder in abstract of bids.
2. Where contractor's worksheet and manufacturers' price lists substantiated claim of mistake in bid, proper remedy is rescission rather than correction where factors necessary for correction were not considered in formulation of bid.

This decision is in response to a request from the Director, Logistics Service, Federal Aviation Administration (FAA), Department of Transportation, for a determination of the propriety of permitting correction after award of a mistake claimed by Potomac Industrial Trucks, Inc. (Potomac), in its bid for contract No. DOT-FA78AC-8157, issued by FAA. See Section 1-2.406-4(1) of the Federal Procurement Regulations. The contract requires Potomac, as successful low bidder on Invitation for Bids (IFB) AC3B-8-0108, to supply one forklift truck, electric, complete with battery and battery charger, Clarklift Model EC500-40-E or equal.

Four bids responsive to the IFB were received and opened on the scheduled opening date of April 6, 1978. These were the bidders and their bids:

Potomac	\$14,572
Clarklift of Oklahoma City	16,443
Jennings Engine Supply Co.	17,198
Towmotor Corporation	17,299

Contract DOT-FA78AC-8157 was awarded to Potomac on June 1, 1978, on the basis of its low bid of \$14,572.

On June 8 and 9, 1978, Potomac notified FAA by telephone that it had made a mistake. In its letter of June 12, 1978, to FAA, Potomac's Government Sales Representative stated that due to inadvertence its bid price did not include the battery and battery charger, and that the omission resulted from his failure to see that the IFB included these components. The letter further states that the reason for the error in failing to recognize the requirements for a battery and battery charger was the bidder's failure to look at page 3 of Amendment 1, which, among other things, contained specifications for the omitted parts.

Amendment I, issued March 14, 1978, substituted a new Article II for Article II contained in the IFB as originally issued. Amendment I consisted of three pages, with each page containing identification as Amendment I, except page 3, which was identified as "Amendment #2."

Among the revisions made in Article II by the amendment, page 3 added requirements concerning a battery and battery charger. Paragraph "cc" reads "Battery capacity must be not less than 600 ampere hours," and paragraph "dd" states "Battery charger must be suitable for recharging battery described under "cc" above, within an 8 hour period." Potomac acknowledged the amendment on March 29, 1978.

FAA fails to see the relevancy of the amendment when the description in Article I of the solicitation clearly contains a requirement for a battery and battery charger.

Article I of the IFB contains the following description of the item solicited:

"FORKLIFT TRUCK, electric, complete with battery and battery charger, Clarklift Model EC 500-40-E or equal, conforming to the minimum specifications set forth in Article II."

It is the position of FAA that the explanation given by Potomac for failing to recognize the requirement for the two components has little, if any, merit. However, we are persuaded that the worksheet and other papers submitted by Potomac support a finding that a mistake was made.

The worksheet shows that the bid price of \$14,572 was derived from a starting figure of \$17,265, which is shown on a price list of Clark Equipment Company as the price for a Model TW 40, after discount, with additions for freight and profit. There is nothing on the price list suggesting that the \$17,265 figure includes a battery and battery charger. Further, there are other price lists showing separate prices for batteries and for battery chargers.

When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake is mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid or binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the offer. In determining whether a contracting officer has a duty to verify offered prices, we have stated that the test is whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer, without making it necessary for the contracting officer to assume the burden of examining every offer for possible error. Charles E. Weber & Associates, B-186267. May 12, 1976, 76-1 CPD 319.

FAA believes that the contracting officer had no constructive notice of the mistake and recommends that no change be made in the contract as awarded. Pointing to the relatively small disparity of about 13 percent between Potomac's bid and the bid of the second low bidder, Clarklift of Oklahoma City (Clarklift), FAA contends that the disparity is not inconsistent with the fact that the bids of Potomac and Clarklift were based on different models.

There may be cases where it is impossible for a contracting officer to recognize the omission of components from a bid price.

See General Time Corporation, B-180613, July 5, 1974, 74-2 CPD 9. And we agree that in the absence of other evidence a difference in model may account for a disparity of 13 percent in bid prices, but here the abstract of bids should have placed the contracting officer on notice that Potomac's bid might not have included the battery and battery charger.

The abstract shows that Clarklift's bid of \$16,443 was broken down into separate prices: one for the forklift, \$13,770, and another for the battery and battery charger, \$2,673. No other bidder made a breakdown, but the separate prices for the components in Clarklift's bid raised its bid price to \$16,443, including it within a cluster of three bids (Clarklift, \$16,443, Jennings, \$17,198, and Towmotor, \$17,299), which were within a range of only 7 percent. So, it is not the 13 percent disparity between Potomac's and Clarklift's bids alone that is significant; it is the additional factor the abstract shows that without the separate price for the components, Clarklift would have been the low bidder, being \$802 lower than Potomac.

We conclude that the contracting officer had constructive notice of a mistake and since he failed to obtain verification of Potomac's offer, no valid and binding contract was consummated.

Potomac refuses to perform, stating that to do so would result in a severe loss, but it offers a battery and battery charger for an additional \$1,818. This price is supported by price lists and discount schedules.

In cases similar to this where the bidder requests that the contract price be recalculated based upon factors not considered in the original bid, we have not allowed the recalculation for the reasons stated in 17 Comp. Gen. 575, 577 (1938):

"The basic rule is, of course, that bids may not be changed after they are opened, and the exception permitting a bid to be corrected upon sufficient facts establishing that a bidder actually intended to bid an amount other than set down on the bid form, where the contracting officer is on notice of the error prior to acceptance, does not extend to permitting a bidder to recalculate and change his bid to include factors which he did not have in mind when his bid was submitted, or as to which he has since changed his mind. To permit this would reduce to a

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mockery the procedure of competitive bidding
required by law in the letting of public contracts.
* * *."

See Luria Brothers Company, Inc., B-187992, January 4, 1977,
77-1 CPD 6.

Although Potomac may not recalculate its bid, based on
documentation reasonably indicating that a mistake had been made
and the finding that the contracting officer failed in his verifi-
cation duty, the contract should be rescinded and the requirement
readvertised.


Deputy Comptroller General
of the United States