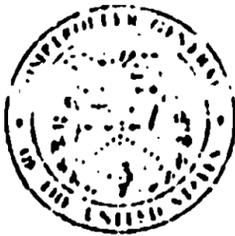


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20340

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FILE: B-192803

DATE: October 25, 1978

MATTER OF: RIVERA Trading Company

DIGEST:

1. Purchaser whose all-or-none bid price for scrap metal was substantially higher than total of high individual bids for same items, higher than the next highest all-or-none bid, and higher than the current market appraisal is entitled to relief since contracting officer should have been on constructive notice of possible mistake in bid and should have requested verification prior to award due to unusually high amount of bid.
2. Purchaser who is entitled to mistake in bid relief may have sales contract rescinded, but not reformed, since evidence presented only suffices to show that mistake was made but is insufficient to show manner in which error occurred and intended bid price.

The Assistant Counsel for the Defense Logistics Agency has forwarded the request of RIVERA Trading Company (RIVERA) for reformation of the price of contract No. 64-8002-027, on the basis of an allegation after award, of an error in the total amount of RIVERA's bid.

The contract was awarded on October 19, 1977, for items 1 through 62 of invitation for bids No. 64-8002, issued by the Philippine Detachment, Defense Property Disposal Region - Pacific. The invitation requested bids on various items of scrap metal. Items 1 through 22 were all identical and were described as follows:

"STEEL, LIGHT AND HEAVY, UNPREPARED SCRAP:
Residue of two Dodge trucks.
Outside
Est. total wt. 3265 kgs. 1 LOT"

Items 23 through 66 were identical and described as:

"STEEL, LIGHT AND HEAVY, UNPREPARED SCRAP:
Residue of one Dodge Truck
Outside
Est. total wt. 1633 kgs. 1 LOT"

Bids were solicited in Philippine pesos (P), and all-or-none bids were permitted. RIVERA submitted the high bid for items 1 through 66 on an all-or-none basis in the amount of P237,017. By letter dated November 25, 1977, Rivera alleged that it intended to bid P137,017 and requested that its contract be reformed to reflect that amount. Thereupon, the contracting officer requested RIVERA to submit its worksheet and other evidence to support its claim.

The contracting officer reports that there have been no recent sales of similar property. The current market appraisal (CMA) for items 1 through 22 was P1833 per item and for items 23 through 66 the CMA was P817 per item, totaling P76,274. The total of the high individual bids for items 1 through 66 was P116,854.02. Also, another bidder submitted an all-or-none bid totaling P114,738 for items 1 through 66. This computes to RIVERA's bid being 2.03 times the sum of the high individual bids, 2.07 times the aggregate of the other all-or-none bid, and 3.11 times the CMA. With regard to the above, the Defense Logistics Agency and the Defense Property Disposal Service express the opinion that due to the unusually high amount of the bid the contracting officer should have been on constructive notice of a possible mistake in bid and, consequently, should have requested verification prior to the award.

In B-179956, February 21, 1971, we stated that the test of when a contracting officer should detect errors in bids is one of reasonableness: "whether under the facts * * * there were any factors which reasonably could have raised the presumption of error in the mind of the contracting officer." Since the present sale involved scrap metal, it should be noted that bids on such a sale generally do not vary as much as bids on usable property since there is an established market for scrap and there are limited uses to which it may be put. See Acme Refining - Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113, and M & H Metals, B-180128, January 29, 1974, 74-1 CPD 40. For this reason, coupled with the price

disparities noted above, we agree that the contracting officer was on constructive notice of error and that the bid should have been verified prior to the award. The contracting officer's failure to seek verification entitles RIVERA to relief. Cf. Lulia Brothers Company, Inc., B-187992, January 4, 1977, 77-1 CPD 6.

In the present situation RIVERA seeks relief in the form of reformation. In regard to correction of an alleged error in bid we have stated that to permit correction of an alleged error, a bidder must submit clear and convincing evidence that an error occurred, the manner in which the error was made, and the intended bid price. Camp Lewis Tent & Awning Company, B-182047, September 17, 1974, 74-2 CPD 174.

The original worksheet of RIVERA contains prices by each item except item 27. A computation of the total amount of the items minus item 27 is P131,900. The inability to determine the exact amount of the intended bid would not per se preclude correction, as an uncertainty within a relatively narrow range is not inconsistent with clear and convincing evidence of what the bid would have been. Chris Berg, Inc. v. United States, 426 F. 2d 314 (Ct. Cl. 1970). In the present situation RIVERA's worksheet contains no information as to the formula for calculating the intended bid for item 27. Also, the worksheet does not establish a pattern of bidding on similar items. Moreover, RIVERA has not supplied any other evidence of its intended bid for this particular item.

While RIVERA's worksheets show that a mistake in bid was made, the evidence is insufficient to show the manner in which the error was made and what the bid would have been but for the error. Our Office has often stated that regardless of the good faith of the party or parties involved, correction should be denied in any case where there exists any reasonable basis for argument that public confidence in the integrity of the bidding system would be adversely affected thereby. 48 Comp. Gen. 748 (1969). The present case falls in this category.

The fact remains, however, that RIVERA is entitled to some relief. Under ASPR § 2-406.3(a)(3) (1976 ed.), "if the evidence is clear and convincing only as to the

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mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

Accordingly, RIVERA's request for reformation is denied. However, the contract may be canceled without liability as administratively recommended.


Deputy Comptroller General
of the United States