

Trans

DECISION



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

10, 287

FILE: B-194662

DATE: May 24, 1979

MATTER OF: Philadelphia Corrugated Container Company

DIGEST:

Contract to supply fiberboard boxes may be reformed based on mistake in bid alleged after award, since contracting officer was on constructive notice of mistake but failed to request verification of bid; mistake and intended bid have been established; and corrected bid is still substantially lower than second low bid.

AGC 00017

The General Services Administration (GSA) has requested our decision regarding an error in bid alleged by Philadelphia Corrugated Container Company (Philadelphia) after the award to the firm of a contract for fiberboard shipping containers. The agency believes that the contract should be reformed.

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Solicitation No. CHN-FT-77-125, issued on December 21, 1977, invited bids for a 1-year requirements contract for the supply of 266 items of containers beginning May 1, 1978. The items were divided into 15 groups by delivery point, and award was to be made to the low bidder for each group, as evaluated under a formula prescribed in the solicitation.

Bids were opened on January 24, 1978. Philadelphia was the low bidder for group 3, which required delivery of six items to Hingham, Maine, at \$349.80. Award was made on April 17.

By letter of June 22, Philadelphia notified GSA that it had erred in calculating its price of \$4.02 for item No. 44, one of the six in group 3. Item No. 44 consisted of a bundle of 25 boxes, each 16-1/2" long x 12" wide x 10" deep. Philadelphia alleged that it had failed to accurately compute the square footage of material required to supply the boxes according to a formula used by the cardboard industry for such purpose. The formula, which involves the square footage per thousand boxes, is described as follows:

[Protest CONCERNING ERROR
in Bid]

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- "(1) Sheet width = box width plus box depth plus 1";
- (2) Sheet length = 2 box lengths plus 2 box widths plus 2-3/4";
- (3) Total fiberboard per container in square feet = sheet width times sheet length times .007."

Philadelphia stated that the error involved step (2) of the formula. Instead of adding two lengths (16-1/2" + 16-1/2" = 33") and two widths (12" + 12" = 24") plus 2-3/4", which would have totaled 59-3/4", Philadelphia alleged that only one length and one width, plus 2-3/4" were added, totaling 31-1/4". By using that figure for sheet length, the cost of material per thousand was computed as \$105.65, and when added to certain other costs, the total price arrived at was \$160.80. That amount was then divided by 40 (1000 boxes divided by 25 boxes per bundle) resulting in a bundle price of \$4.02. Correct application of the formula would have yielded a bundle price of \$7.94, and Philadelphia's evaluated bid for group 3 would have been \$389.

When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid and 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 bid. In determining whether there was a duty to verify bid 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. R. E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305, and cases cited therein. In such circumstances, the price is ordinarily corrected upon presentation of evidence establishing the error and the intended price. Noah Lewis, B-182660, January 16, 1975, 75-1 CPD 29.

GSA concedes that the contracting officer was on constructive notice of a possible mistake prior to award. The reasons therefor are the substantial disparities between Philadelphia's group 3 bid and item No. 44 bid and those of the other four bidders. The other bids on group 3 were \$506.14, \$461.19, \$445.08, and \$444.34, compared to Philadelphia's bid of \$349.80; the other bids on item No. 44 were \$9.95, \$9.18, \$9.16, and \$8.75, all much higher than Philadelphia's bid of \$4.02 (although the award of a contract for a group was to be based on the low evaluated bid for all items therein, GSA advises that it is the usual practice to review the entered prices for each item in a group; however, the contracting officer neglected to do so in the present case.)

We agree with the agency's conclusions. Philadelphia's low bid on group 3 was nearly 22 percent less than the second low bid. The second, third, and fourth low bids were in the very narrow range of less than 4 percent. In this connection, we have recognized bid range as a proper factor in considering whether a contracting officer was on constructive notice of an error. See King Brothers, Inc., B-183717, June 2, 1975, 75-1 CPD 332. In addition, Philadelphia's bid of \$4.02 on item No. 44 was less than half the second low bid, which itself was only 12 percent lower than the highest bid on the item. Although a contracting officer generally has no obligation to compare bid prices on individual items when a contract is to be awarded in the aggregate, 47 Comp. Gen. 365 (1968), in view of GSA's advice that such comparison is the usual procedure in these situations we consider it relevant to the notice issue. See Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978); 78-1 CPD 279. Under the circumstances, the contracting officer should have requested that Philadelphia verify its bid.

It is also GSA's position that the nature of the error and the intended bid have been established. We agree on this point as well. GSA does not dispute that the formula presented by Philadelphia for computing quantities of material necessary for a particular job in fact is standard in the cardboard industry.

As such, it is an acceptable factor for our consideration. See Sunland Refining Corporation, B-191272, August 30, 1978, 78-2 CPD 154. Documentation submitted with the claim of mistake supports Philadelphia's contention that in preparing the bid on group 3 it did not accurately compute the total square footage of material that would be required for item No. 44 in accordance with the formula, and that accurate computation would have yielded a bid price for item No. 44 of \$7.94, and an evaluated bid price for group 3 of \$389. We note that both figures are considerably closer to the corresponding ones submitted by the other bidders, and that Philadelphia's evaluated bid as corrected would still be the lowest one received by a substantial margin.

In view of the above, the contract should be reformed to reflect the corrected evaluated bid price.



Deputy Comptroller General
of the United States