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Kratz

DECISION



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

FILE: B-202971

DATE: July 15, 1981

MATTER OF: Brendle Sprinkler Company, Inc.

DIGEST:

1. GAO will not disturb procuring agency determination to permit correction alleged after bid opening but before award where reasonable basis for determination exists.
2. Where bidder's worksheet and other evidence clearly show bidder omitted certain cost elements of its intended bid, there is reasonable basis for agency determination to allow bid correction to reflect actual bid intended. Fact that actual cost of work involved might be significantly less than amount bidder intended to include in bid for that work does not preclude correction since only relevant consideration is bid actually intended.

Brendle Sprinkler Company, Inc. protests the decision by the Department of the Air Force to permit Sprinkler Contractors, Inc. (SCI) to correct a mistake in bid which was detected after the opening of bids submitted in response to invitation for bids (IFB) F01600-81-B-0023. Brendle alleges that the amount by which SCI has been permitted to increase its submitted bid price is excessive and contends that an award based upon the corrected price would be improper. We disagree.

The Air Force issued the IFB for the installation of sprinkler systems in two buildings at Maxwell Air Force Base and one at Gunter Air Force Station. The IFB required the work to be performed at each building to be bid as a separate lump sum item.

[Protest of Air Force Decision to ^{Permit} Correction of Mistake in Bid]

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SCI was the low bidder on each of the three items. Its aggregate bid price of \$84,835.00 was 27 percent below that of Brendle and 22 percent below the Government estimate. Because of this disparity, the contracting officer requested SCI to reexamine the specifications and its bid price and to verify its bid. SCI subsequently determined that it had failed to include in its bid price amounts for the underground work to be performed at each building. SCI therefore requested permission to correct its bid pursuant to Defense Acquisition Regulation § 2-406-3(a)(3) (1976 ed.). Specifically, SCI sought to increase its submitted bid price on the three items a total of \$22,683.00.

In support of this request, SCI submitted the worksheet it used in computing the bid price and a sworn statement by the employee responsible for the mistake. The Air Force, after administratively determining that SCI had submitted clear and convincing evidence that it had made a bona fide mistake and that the intended bid price was \$107,518.00, permitted the requested correction. Brendle's bid of \$116,300 was second low. Thus after correction, SCI remained the low bidder.

Brendle does not question the determination that SCI made a mistake in bid and that correction should be allowed. Rather, Brendle asserts that the amount of \$22,683.00 allowed in recognition of the omitted underground work is unreasonably high and alleges that this work can be done for \$10,000 less. Brendle contends that if awarded a contract, SCI would receive an unfair profit with respect to the underground work.

The authority to correct mistakes in bids alleged after opening but before award lies with the procuring agency and, therefore, we will not disturb an agency determination concerning correction unless there is no reasonable evidentiary basis therefor. Kings-Point Manufacturing Co., Inc., B-193952, September 14, 1979, 79-2 CPD 196. Generally, the correction of a mistake alleged prior to award will be permitted only where the low bidder has submitted clear and convincing evidence showing that a mistake has been made, the manner in which the mistake occurred, and the intended bid price. Southern Plate Glass Co., B-188872, August 22, 1977, 77-2 CPD 135. Thus, the pertinent inquiry for the Air Force was

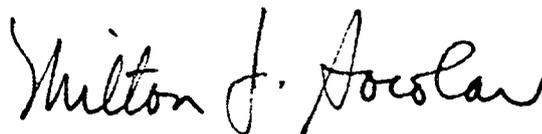
whether SCI actually intended to bid an additional \$22,683.00, not whether that amount was unreasonable or reflected an inordinately high profit.

We believe the Air Force could reasonably conclude that SCI's evidence was clear and convincing as to the intended bid. For example, each lump sum item is supported by two separate and detailed estimates--one for the inside and one for the underground (outside) work. According to an affidavit from SCI's secretary, she failed to combine the two elements of each item when completing the bid form; instead she used only the sum computed for the inside work for each item.

We do not believe that Brendle's assertion that SCI's bid for the omitted work was too high is relevant, since all bidders obviously do not calculate their bids in the same manner.

We of course recognize that the correction of bid mistakes presents a vexing problem. It has been argued that bid correction after bid opening and the disclosure of prices compromises the integrity of the competitive bidding system, and to some extent at least, this is true. Nonetheless, we believe that there are cases in which bid correction should be permitted. 48 Comp. Gen. 748 (1969). Thus, where the regulatory procedures for bid correction are strictly followed, the United States should have the cost benefit of a corrected bid if it is still low. The potential for abuse flowing from a decision allowing correction is protected against by the high standard of proof necessary before correction is permitted. See John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294.

The protest is denied.



Acting Comptroller General
of the United States