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Report
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DECISION



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

FILE: B-204577

DATE: February 9, 1982

MATTER OF: Specialty Systems, Inc.

DIGEST:

1. Contracting officer properly determined the low bid to be responsive since it was an unqualified offer to perform the exact work called for in the invitation.
2. GAO will not disturb procuring agency determination to permit correction alleged after bid opening but before award where reasonable basis for determination exists.
3. Where bidder's worksheets clearly show that bidder omitted certain costs of its intended bid, there is a reasonable basis for the agency determination to allow bid correction to reflect the actual bid intended.
4. Allegation that contracting agency improperly awarded contract notwithstanding pendency of protest filed at GAO is untimely when filed more than 2 months after award. See 4 C.F.R. § 21.2(b)(2) (1981).

Specialty Systems, Inc. (Specialty), protests the decision by the United States Coast Guard Air Station (Coast Guard) to permit the Charles J. Ramm Construction Co. (Ramm) to correct a mistake in its bid and the subsequent award of a contract on September 2, 1981, to Ramm under invitation for bids (IFB) DTCG31-81-B-10013.

The IFB solicited bids for the construction of a multi-purpose building at the United States Coast Guard Air Station, San Diego, California. Specialty has raised several arguments in support of its contention that the Coast Guard should not have permitted Ramm to correct a mistake in its bid alleged after bid opening.

Our review of the record leads us to the conclusion that the protester's arguments are without merit. Accordingly, we deny the protest.

The IFB required a base bid for all work required by the "Specifications for multi-purpose building at United States Coast Guard Air Station, San Diego, California" including structural capability to add a further second story. The IFB also called for an alternate base bid (without the second story capability) and five additive items. Additive item number 2(a) called for the bidder to delete all the specified wood windows and wood-framed sliding glass door; additive item number 2(b) called for the addition of aluminum windows and an aluminum-framed sliding glass door. Twelve bids were received by bid opening and the low base bid of \$815,776 was submitted by Ramm, which also bid \$25,575 for additive item 2(a) and \$20,198 for additive item 2(b). The second low bid was submitted by Specialty in the amount of \$900,125. The Government estimate was \$915,812.

The contracting officer reports that she intended to request Ramm to verify its bid since its price was approximately 11 percent below the Government estimate and approximately 9 percent below the second low bidder's price. However, before the request was transmitted, a representative of Ramm advised the contracting officer by telephone of an alleged mistake. Ramm was requested to furnish original worksheets along with any other evidence to support the allegation. Ramm provided the contracting officer with its worksheets. Ramm alleged that its base bid omitted costs of the wood windows and wood-framed door; nevertheless, these windows and door were required by the IFB. The bidder further alleged that it interpreted the IFB as including the windows and door only in additive item number 2 and thought that the Coast Guard would select the type of window and door desired and add it to the base and alternate bids. As a result of this omission, Ramm contended its base bid price was understated by \$25,575 and, therefore, requested that it be permitted to correct its base bid price to \$841,351.

The information concerning Ramm's alleged mistake in bid was submitted to the Comptroller, United States Coast Guard Headquarters, in Washington. In his findings, the Comptroller determined that Ramm had submitted clear and convincing evidence of the mistake, the manner in which it occurred, and the intended bid. Therefore, the Comptroller determined that Ramm could correct its base bid price to \$841,351, and award to Ramm was thereafter made on September 2, 1981, on the basis of the corrected price. Ramm's bid after correction remains the low bid.

Our Office has held that in order to permit correction of an error in bid prior to award, a bidder must submit "clear and convincing evidence" showing that a mistake was 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; 53 Comp. Gen. 232 (1973). These same basic requirements for the correction of a bid are found in the Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2) (1964 ed. circ. 1), which provides:

"A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended."

Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. Kings Point Mfg. Co., Inc., B-193952, September 14, 1979, 79-2 CPD 196; 53 Comp. Gen. 232, 235 (1973).

Counsel for Specialty notes that the IFB called for a base bid that included the cost of wood windows and a sliding door and contends that, by failing to include this cost, Ramm submitted a nonresponsive bid. We do not agree with the protester's contention. The test to be applied in determining the responsiveness of a bid is:

"* * * whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof." 49 Comp. Gen. 553, 556 (1970).

In submitting its bid without taking any exception to the specifications, Ramm's bid was responsive and the firm is legally bound to comply with all the specifications.

Specialty contends that Ramm has not provided clear and convincing evidence of its alleged mistake and its intended bid. In this regard, Specialty states that no mistake appears on the face of Ramm's bid and the fact that the bid was 9 percent below the next low bid does not call for the conclusion that a bid mistake was made.

We disagree with the protester's position. First of all, since Ramm alleged the mistake after bid opening the question is whether the firm submitted clear and convincing evidence of the mistake and the amount of its intended bid--not whether a mistake is evident from the face of the bid. See generally, FPR § 1-2.406-3, above. The fact that there was no mistake on the face of Specialty's bid or that it was only 9 percent below the next low bid is immaterial.

Specialty also argues, in essence, that the specifications clearly required the base bid to include a price for the "wood windows and wood-framed sliding glass door" and that, since the awardee misinterpreted an allegedly clearly-written specification and failed to include a price for these items, its bid may not be considered for correction. We do not agree with this argument. Even if the pricing error alleged in Ramm's bid was caused by admitted negligence, the bid may be considered for correction. See 50 Comp. Gen. 655, 660 (1971).

Specialty next contends that Ramm's request for correction should be denied since the worksheets it submitted are undated, contain no indication as to

when they were prepared, and were submitted approximately 1 month after the first allegation of mistake was made. There is no legal requirement that the worksheets be dated and in the absence of any evidence to show that the worksheets were other than the ones used in preparing the bid, we find no basis to question the Coast Guard's reliance on them.

Specialty also argues that Ramm has failed to provide clear and convincing evidence of what its intended bid would have been absent its mistake since its worksheets contain different entries for the price of these windows and door. Specialty points out that by Ramm's own admission its worksheets for additives No. 2(a) and 2(b) show the prices for the items reversed. Thus, it is allegedly not possible to determine what Ramm's bid would have been absent its alleged mistake. We do not agree with Specialty's position.

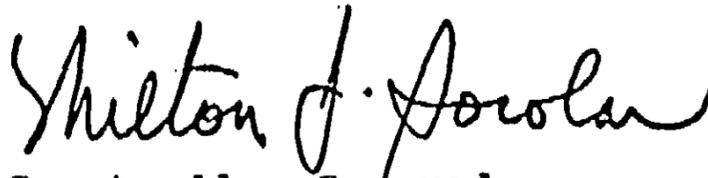
The cover sheet for the worksheets lists a cost total for each page of the worksheet. The costs of the windows are shown on pages 5 and 6. The totals for those pages do not include the window and door costs; thus, the cost of additive item 2 was not part of Ramm's total bid. On page 5, the item description is 08500, "windows and sliding" and is annotated "ADD. 2(a) C&C Glass \$20,198." However, section 08500, in the specifications is entitled "Aluminum Windows and Sliding Glass Door" (Additive No. 2(b))." On page 6, the item description is 08600, Wood Doors/Windows, and is annotated "\$25,575 ADD. 2(b)." In addition, worksheet page 1 lists all the additive items and their costs and does have these additives detailed as found in Ramm's bid for additive item 2, namely: A. Wood windows - \$25,575 and B. Aluminum windows - \$20,198. Thus, we agree with the contracting officer's contention that the worksheet documentation is not ambiguous but merely shows the prices for items 2(a) and 2(b) reversed because of an annotation error.

After our review of the material submitted by the Coast Guard, we find no basis for questioning the Coast Guard's decision to permit Ramm to correct its bid. We 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. However, since the mistake in bid procedures were strictly followed here so that the integrity of the competitive bidding system was not prejudiced, the United States should have the cost benefit of the corrected bid since it is still lower than any other bid submitted. See John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPI 294.

More than 2 months after the award of the contract, Specialty submitted a new ground of protest. The company contended that the Coast Guard improperly awarded the contract prior to the resolution of its protest. This new ground of protest is clearly untimely filed under our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(2) (1981). Furthermore, our records show that the protest was received at our Office on the same day that the award was made so that the Coast Guard apparently did not have notice of the pendency of the filed protest prior to the award. In any event, since the protest is without merit, the award did not prejudice Specialty even if the Coast Guard had knowledge of the protest.

Accordingly, we deny the protest.

for 
Comptroller General
of the United States