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DECISION



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

FILE: B-207871

DATE: August 31, 1982

MATTER OF: Pneumatic Construction Company

DIGEST:

Protest against contracting agency's decision allowing upward correction of low bid is sustained. Low bidder allegedly forgot to include painting subcontractor's quoted price for field painting metalwork in calculating its bid price for metalwork. While there is evidence of a mistake, record does not contain clear and convincing evidence of intended bid price. Worksheets contain no reference to such painting by proposed subcontractor and it appears low bidder already included costs of painting some metalwork items in its bid calculations. Accordingly, low bid may be withdrawn but not corrected.

Pneumatic Construction Company has protested before award the decision by the Department of the Interior to permit Dix Corporation to correct a mistake in its bid submitted in response to invitation for bids No. 10-C0135 which was issued by the Department of the Interior's Bureau of Reclamation.

The invitation solicited bids for miscellaneous metalwork to be constructed for and installed at the Grand Coulee Dam. The seven bids received in response to the invitation ranged from Dix's low bid of \$552,854 to a high bid of \$1,147,561. Pneumatic Construction's bid of \$654,795 was the second lowest bid. The Government's estimate for this work was \$628,450.

Since Dix's bid was approximately 12 percent below the Government estimate, the contracting officer requested that Dix verify its bid price. Dix notified

the contracting officer that it had made an error in the amount of \$42,080 by omitting from its bid the price quoted by a proposed subcontractor for field painting metalwork required under line item number 2. Dix had bid a lump-sum price of \$397,158 for this item. Dix claimed that it planned on having this metalwork field painted by a subcontractor for \$40,077 and that it would have added a charge of \$2,003, representing its customary 5-percent overhead rate for subcontracted work. To support the alleged mistake, Dix submitted its original worksheets, its undated notes concerning a telephone quotation from H. B. Painters in the amount of \$40,077 for field painting, a written confirmation of H. B. Painters' quotation for field painting dated April 27, 1982, and a sworn statement from the president of Dix Corporation explaining how the mistake was made.

Upon review of the evidence submitted, the contracting officer concluded that there was clear and convincing evidence that Dix had made a mistake but not what Dix's intended bid price was. The contracting officer expressed two concerns which cast doubt upon Dix's claim that its intended bid was exactly \$42,080 more than its actual bid. First, the contracting officer was concerned that the subcontract which Dix's worksheets showed for metalwork fabrication might include painting and, therefore, the field painting subcontract would not have to be used in calculating the total price for line item number 2. Second, the contracting officer was concerned that more than one quotation for field painting of metalwork might have been received by Dix even though only one such quotation was submitted by Dix. If Dix actually had received more than one subcontractor quotation for this work, then it would not be possible to tell which price was intended to be part of Dix's actual bid. Accordingly, the contracting officer recommended that Dix be allowed to withdraw, but not correct, its bid. However, on submission to the Office of the Secretary, it was determined that there was clear and convincing evidence both as to the existence of a mistake and the intended bid price. Therefore, the Department of the Interior decided to allow Dix to correct its bid upward in the amount of \$42,080 for a new total bid price of \$594,934. Since Dix's bid as corrected would still be lowest, the agency proposes to award to Dix after resolution of Pneumatic Construction's protest by our Office.

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. See Specialty Systems, Inc., B-204577, February 9, 1982, 82-1 CPD 114, and cases cited therein. See also Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2) (1964 ed. circ. 1).

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. Specialty Systems, Inc., supra.

Dix asserts that this error occurred primarily because its estimator was inexperienced in putting bids together and simply forgot to include in the bid the cost of having a subcontractor field paint the metalwork required under line item number 2. The Department of the Interior points out that Dix's bid price for line item number 2 is approximately 18 percent below the Government estimate for this item and more than 25 percent below the second low bid for this item. The Department of the Interior is convinced that Dix's intended bid included the cost of subcontracting to H. B. Painters and that the subcontract for fabricating the metalwork included shop painting but not field painting. Since only one subcontractor quote for field painting was submitted by Dix and because Dix has stated that only one such quote was received, the Department of the Interior would recompute Dix's bid to add the amount of \$40,077 for field painting. Furthermore, since the worksheets show a consistent pattern of adding 5 percent for overhead on subcontract work, the Department of the Interior would add an additional \$2,003.

While we agree with the Department of the Interior that there is adequate evidence in the record to show

that a mistake was made, we find that the record does not contain sufficient evidence to allow Dix to correct its bid in accordance with the amount claimed as the intended bid.

The degree of proof required to justify withdrawal of an erroneous bid before award is lower than the degree of proof required to allow correction of the bid. See B-165405, October 24, 1968; 36 Comp. Gen. 441 (1956).

We are not persuaded that Dix has proven its intended bid price. While the Department of the Interior argues that the subcontract price for fabricating these metalwork items included shop painting, but not field painting, it is not clear from the specifications what proportion of the work would be field painted rather than shop painted. Furthermore, our review of Dix's worksheets shows that the costs of paint and labor for cleaning and painting many of the metalwork items were included in calculating the bid price for line item number 2. The protester also asserts that Dix's claim of \$42,080 for field painting is unreasonably high and points out that its own calculations (as evidenced by its worksheets) included only \$8,639 for such work. The amount already shown in Dix's worksheets for paint, cleaning, and painting is coincidentally just under \$8,000. This amount, as previously stated, was apparently included in Dix's actual bid price for line item number 2. Finally, the worksheets submitted contain absolutely no reference to field painting but merely show a latter notation indicating a blank space on the worksheet where this item should have been entered. There are numerous other blank spaces under other items on the same worksheet. Thus, we have essentially only the subcontractor quotation to show that this item should have been included in the bid price. We note that Dix submitted a large number of subcontractor quotations for various portions of the work but most of these subcontractor quotations were not used in calculating the bid.

Accordingly, since there is nothing in Dix's worksheets to support its claim that a subcontractor quotation was omitted from its bid price, it cannot be reasonably concluded that Dix's bid should be corrected upward as determined by the Department of the Interior. Because of our doubt as to the correct additional amount for field painting and, consequently, the actual intended bid price, we find that bid correction should not be permitted.

However, as noted above, the degree of proof required to permit correction is much higher than that required to justify withdrawal. Here, the conclusion that Dix made a mistake entitling it to withdraw its bid is based on the disparity in bid prices received, Dix's assertion that it made a mistake, and the inability of the agency to affirmatively establish that Dix did not err in submitting the bid it did. Sentinel Electronics, Inc., B-194209, August 24, 1979, 79-2 CPD 150.

For the above reasons, Dix Corporation should be allowed to withdraw, but not correct, its bid, and Pneumatic Construction's protest is sustained.

Milton J. Forster

Acting Comptroller General
of the United States