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DECISION



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

FILE: B-207682

DATE: September 8, 1982

MATTER OF: Coleman Industrial Construction Company

DIGEST:

Where a mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of the mistake and of the bid actually intended by submitting worksheets and an affidavit showing a mistake made by transferring improper figure from the bid summary sheet to the bid schedule, and the bid as corrected remains low by a substantial amount, there is a reasonable basis for agency determination to allow bid correction so as to reflect intended bid.

Coleman Industrial Construction Company protests the decision by the Department of Energy (DOE) to permit L.S. Womack, Inc. to correct a mistake in its bid and the subsequent award of a contract on May 7, 1982, by DOE's Strategic Petroleum Reserve Project Management Office to Womack under invitation for bids (IFB) No. DE-FB96-82-P010572. For the reasons discussed below, we deny the protest.

The IFB, a total small business set-aside, was issued on March 26, for site preparation consisting of the construction of a well pad and mud pit as well as demolition work at Bryan Mound, Texas. Eight bids were received on the April 16 opening date. Womack's low bid of \$292,880 consisted of \$289,980 for item 001, the construction and demolition work, and \$2,900 for item 002, the performance and payment bond. Maco, Inc., a firm subsequently determined by the Small Business Administration (SBA) to be a large business and thus ineligible for award, submitted the next low bid of \$498,987. Coleman's bid of \$521,440 was the third low bid received while the Government estimate for the work was \$721,000. Owing to the disparity between the low bid and the other bids, Womack

was contacted by the contracting officer and requested to verify its bid price.

A representative of Womack stated that its bid contained a mistake and requested that the bid be corrected. In support of this request, Womack submitted its original worksheets and subsequently provided an affidavit from the individual who prepared the bid. The worksheets reveal an apparent error had been made in the transferring of the bid price for item 001 from the worksheets to the bid form. Page 8 of the worksheets contains an entry for 15,000 tons of limestone for a "total" price of \$289,980. The worksheets also include a bid summary sheet which at the bottom reflects the total estimated cost of all labor and materials for the work, including \$289,980 for the limestone, at \$465,622. The individual preparing the bid erroneously typed the "total" price of the limestone as the price for the construction and demolition work.

Womack further asserted that its intended bid price for item 002, performance and payment bonds, was \$4,700. Womack submitted an affidavit explaining that the "usual and standard" cost of such bonds amounts to one percent of the total price of the work. The initial bid price of \$2,900 for the bonds reflected one percent of the erroneous bid of \$289,980 for item 001 while the corrected figure of \$4,700 represents one percent of the corrected work price for a total corrected bid price of \$470,322 (\$465,622 plus \$4,700).

The contracting officer referred the case to DOE Headquarters with a recommendation that Womack be allowed to correct its mistake. On the basis of the worksheets and the affidavit, DOE concluded that clear and convincing evidence existed to establish the existence of a mistake and the intended bid. Thus, Womack was permitted to correct its bid to \$470,322 and since its price remained low, it received the award.

The protester raises a number of objections to DOE's actions. Coleman states that after bid opening it made several inquiries as to whether Womack would be awarded the contract. The contracting officer allegedly informed Coleman that Womack had only requested permission to withdraw its bid. Relying on this information, Coleman initiated a size protest against the second low bidder, Maco. SBA's regional office determined Maco to be other than a small business as a result of that protest. The protester "thinks" that correction was allowed because "the agency had received information from both Coleman and Maco that the outcome of the size protest would * * * be appealed to [the] Size Appeals Board." Coleman also alleges that: 1) DOE "displayed extreme bad faith in this * * * matter"; 2) Womack failed to submit clear and convincing evidence in support of its request for correction; and 3) correction raised Womack's bid price too close to the next low bid.

Correction of an error in bid prior to award will be permitted when the bidder has submitted clear and convincing evidence showing that an error has been made, the manner in which the error occurred, and the intended bid price. Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223. Although our Office retains the right to review administrative determinations, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and we will not disturb an agency's determination concerning correction unless there is no reasonable basis for such determination. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294. The existence of the error and the bid actually intended may be established from the bid, the bidder's worksheets and other evidence submitted. Our Office has found worksheets in themselves to be clear and convincing evidence if they are in good order and indicate the intended bid price, so long as there is no contravening evidence. Trenton Industries, supra.

The worksheets here in combination with the affidavit submitted clearly indicate that the intended bid price was \$470,322 and establish how that price was calculated and that a simple clerical error had been made in transferring a figure from the worksheets to the bid form.

Coleman has neither submitted any evidence nor pointed to any in the record to contradict this finding. Further, upon review of the record, we find no evidence supporting Coleman's allegation of bad faith. Thus, we agree with DOE's determination to permit correction of Womack's bid. It is unfortunate that Coleman pursued its size protest of the second low bidder under the mistaken assumption that only withdrawal of Womack's bid would be permitted. However, we are aware of no requirement that other bidders be notified of a firm's application for correction of its bid. In any event, Coleman may have decided to pursue the matter of the size protest in anticipation of a possible denial of Womack's correction request.

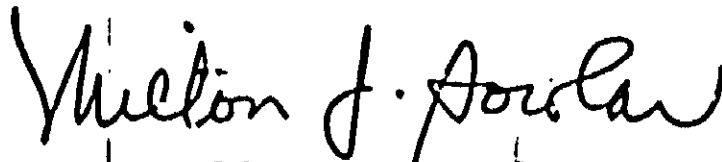
Concerning Coleman's assertion that Womack's intended bid is too close to the next low bid, we note that there is a substantial difference in price (\$28,665 and \$51,110) between Womack's corrected bid and the second and third low bids respectively. While the closer an asserted intended bid is to the next low bid the more difficult it is to clearly establish that the amount claimed was actually the intended bid, we do not believe that situation exists here. For example, we have denied correction where the corrected bid price came within one-half of a percent of the next low bid. National Office Moving Company, B-196282, March 10, 1980, 80-1 CPD 185. Correction also was disallowed in 48 Comp. Gen. 748 (1969) where the low bid would have increased to within \$613 of the next low bid of \$272,464. In that case we stated:

" * * * regardless of the good faith of the party or parties involved, correction should be denied in any case in which there exists any reasonable basis for argument that public confidence in the integrity of the competitive bidding system would be adversely affected thereby."

Here, there is more than six percent and ten percent differential between Womack's intended bid and the second and third low bids respectively. We also note that the second low bid was submitted by an ineligible bidder, a large business, and that in fact there is a substantial difference of \$51,118 between the corrected bid and the next low acceptable bid

of Coleman in this \$470,000 procurement. Under the circumstances, we do not believe that public confidence in the integrity of the competitive bidding system would be adversely affected by permitting correction.

Accordingly, the protest is denied.



Acting Comptroller General
of the United States