

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

26727

FILE: B-212159 **DATE:** November 15, 1983**MATTER OF:** Da-Green Electronics, Ltd.**DIGEST:**

Sales award should not be made to the high lump-sum, all-or-none bidder on 12 sale items where the bidder requests waiver of its error in unintentionally including one rather than another particular item in all-or-none bid. Although the all-or-none bid is high, corrected and uncorrected, GAO finds that acceptance of the admittedly erroneous, uncorrected bid would improperly displace high individual bidder for the item on which the all-or-none bidder never intended to bid.

Da-Green Electronics, Ltd. (Da-Green), protests the rejection of its all-or-none bid on sale invitation No. 27-3215 issued by the Defense Logistics Agency (DLA), for 153 items of electrical and electronic equipment and aircraft parts. No awards have been made.

For the reasons set forth below, we find the protest to be without merit.

Da-Green submitted a lump-sum, all-or-none bid of \$27,800 for items 6, 7, 10, 17, 21, 28, 29, 31, 32, 33, 36 and 122. Shortly after bid opening, Da-Green informed DLA that it had intended to bid on item 35 instead of item 36. By letter, Da-Green enclosed its worksheets and bid book to substantiate Da-Green's claim of a typographical error. Da-Green emphasized that it was interested only in the item 35 unused electrical connectors and not the item 36 "damaged, rusted, poor condition trailer mounted air compressor."

DLA found that while Da-Green had made an obvious mistake in its bid, an intent by Da-Green to bid on item 35 was not ascertainable from the face of Da-Green's bid. DLA determined that Da-Green should be permitted to withdraw its all-or-none bid, but not correct it because such correction would displace the high bidder for item 35. Upon being so

027130

informed, Da-Green requested that the bid be considered for award in the form submitted, that is, with the mistake in bid on item 36 of the invitation. This request was denied by DLA.

Da-Green contends that its bid as originally submitted should be accepted because there would be no prejudice to other bidders. Da-Green alleges that its 12-item, all-or-none bid is the high bid whether considered as mistaken or considered as the intended bid. Therefore, the company asserts that none of the other bidders which bid on item 36 would have received the award for that item if Da-Green had not advised DLA of its error.

In the alternative, Da-Green argues that it should not have to withdraw its entire bid because of a mistake in bidding on one item of several items. Da-Green contends that, instead, it should have been required to withdraw on item 36 only if the dollar amount of its all-or-none bid was applied to the other sale items bid by Da-Green.

DLA contends that Da-Green's bid cannot be considered as originally submitted because this would result in the displacement of an otherwise high bidder on item 36. In this regard, DLA states that in sales of surplus government property, an all-or-none bid is eligible for award if it results in a higher overall profit to the government when compared to the total amount of the high bids otherwise available on each of the specific items covered by the all-or-none bid. DLA states that there were four high bidders on the specific items covered by Da-Green's all-or-none bid. DLA proposes to make awards to these bidders at a total price of \$23,249. In DLA's opinion, the fact that Da-Green never intended to bid on item 36 of the solicitation cannot be ignored.

With regard to Da-Green's contention that its all-or-none bid could be considered at the \$27,800 price without item 36, DLA argues that this violates the "basic rules" regarding all-or-none bids. DLA emphasizes that all-or-none bids must be considered as one unit and individual items within such a bid cannot be withdrawn or substituted for other items after bid opening. According to DLA, allowing Da-Green to withdraw item 36 only would amount to nothing more than negotiating a favorable bid with one bidder while the otherwise successful bidders stand by and await the outcome of such negotiations.

Where a bidder, whether intentionally or not, is in the position, after the other bid prices have been revealed, of withdrawing its bid, asking for correction or requesting waiver of an error, consideration of that bid ordinarily would be detrimental to the competitive bid process. See 42 Comp. Gen. 723 (1963); Bruce-Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 CPD 310. To permit a bidder to do so would be tantamount to allowing the ostensibly successful bidder to elect, after bid opening, whether to stand on the bid or withdraw it depending on which was in the bidder's best interest. 52 Comp. Gen. 258 (1972).

Nevertheless, this Office has permitted an exception to the above-described rule against a bidder waiving its mistake, if it is clear that the bidder would have been low (in a procurement), absent the mistake, even though the amount of the intended bid could not be clearly proven under the rules applicable to the correction of mistakes in bids. 52 Comp. Gen. supra; Arkay Products Corporation, B-181596, October 22, 1974, 74-2 CPD 219. This is because the acceptance of such a bid would not be prejudicial to the other bidders. Arkay Products Corporation, supra.

We find that the exception to the rule against waiver is inapplicable here. While Da-Green's 12-item, all-or-none bid as uncorrected or corrected is high, we conclude that DLA's acceptance of the company's uncorrected bid would be prejudicial to the other bidders on the invitation. We agree with DLA that consideration of Da-Green's admittedly erroneous all-or-none bid after opening would improperly displace the high individual bidder for item 36. Da-Green's argument that no other bidder which bid specifically on item 36 would have received the award for that item had Da-Green not claimed error is irrelevant. Not only did Da-Green claim an error in bidding on item 36, but DLA determined, based on a review of Da-Green's worksheets, that an error in bid had been proven. Thus, it is proper, in our opinion, to take into account the prejudice to the high item bidder on item 36 if DLA were to accept Da-Green's proven mistaken bid on that item.

Finally, we subscribe to DLA's position that Da-Green cannot modify its all-or-none bid by breaking out item 36 in order to obtain award. See, generally, 34 Comp. Gen. 82 (1954); Canova Moving and Storage Company, B-207168, January 18, 1983, 83-1 CPD 59.

We deny Da-Green's protest.

for *Milton J. Dozola*
Comptroller General
of the United States