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DECISION



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

FILE: B-219981

DATE: November 27, 1985

MATTER OF: Tektronix, Inc.

DIGEST:

1. Protester, the second low bidder, has the direct economic interest necessary to be an interested party entitled to challenge the contracting agency's decision to allow the low bidder to correct an apparent mistake in its bid since, if the protest were sustained, the low bidder's bid would have to be withdrawn and the protester thus would be in line for award.
2. Contracting agency improperly permitted awardee to correct mistake in its bid as a clerical mistake since the unit price and extended price were in agreement and intended bid therefore could not be determined from the face of the bid.
3. Withdrawal of bid, not correction of mistake in bid, was the appropriate remedy where the only evidence of the intended bid was the bidder's price sheet, which lacked any indication of how price was calculated; the amount of the error in price was substantial; and corrected bid was close in amount to the second low bid.

Tektronix, Inc. protests the award of a contract to Biddle Instruments under invitation for bids (IFB) No. M00027-85-B-0037, issued by the Marine Corps for time domain reflectometers and associated technical data. Tektronix challenges the Marine Corps' decision to allow Biddle to correct an apparent mistake in its bid. We sustain the protest.

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The IFB called for bidders to submit unit and extended prices for a basic quantity of 100 reflectometers and an additional option quantity of 100 reflectometers, as well as separate option prices for related technical data. The IFB provided that bids would be evaluated on the basis of both the basic and option prices for the reflectometers and technical data. The two bids received, from Biddle and Tektronix, were as follows:

	<u>Basic quantity (100)</u>		<u>Option quantity (100)</u>	
	Unit/Extended price		Unit/Extended price	
Biddle	\$3940	\$394,000	\$3.50	\$350
Tektronix	\$3800	\$380,000	\$3800	\$380,000

Based on the disparity between Biddle's option price and the other prices, the contracting officer concluded that Biddle might have made a mistake in its bid for the option quantity. According to the Marine Corps' report, the contracting officer regarded the error as a clerical mistake resulting from misplacement of a decimal point, and concluded that Biddle's intended unit price for the optional quantity was \$3500, not \$3.50. The contracting officer then requested that Biddle verify its intended bid, as required by Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-2(a) (1984), which prescribes procedures for correction of clerical mistakes. Biddle first responded by letter dated May 29, 1985, stating that a mistake had been made and requesting a "rebid." In response to the Marine Corps' request for further information, Biddle sent another letter, dated July 18, attaching an internal price sheet showing the unit price for the option quantity as \$3500, and confirming the contracting officer's conclusion regarding Biddle's intended price.

The contracting officer's recommendation that Biddle be allowed to correct its bid was reviewed and concurred in by the Marine Corps Contracts Division Review Board. Award then was made to Biddle on August 5.

As a preliminary matter, the Marine Corps argues that Tektronix is not an interested party eligible to maintain this protest. The Marine Corps points out that both Biddle's original bid (\$405,427.50) and its corrected bid

(\$755,077.50) are lower than the Tektronix bid (\$776,332).^{1/} Since Tektronix thus is not in line for award regardless of whether Biddle's bid is corrected, the Marine Corps argues, Tektronix is not an interested party. We disagree. The basis of the protest, discussed in detail below, is that Biddle's intended bid was not adequately established, and Biddle therefore should have withdrawn its bid. As a result, if Tektronix prevailed in its protest and the Biddle bid consequently was withdrawn, Tektronix, as the only other bidder, would be in line for award. Under the Competition in Contracting Act of 1984, 31 U.S.C.A. § 3551(2) (West Supp. 1985), and our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1985), an interested party is defined as an actual or potential bidder whose direct economic interest would be affected by the award or failure to award the contract involved. Here, since Tektronix would be in line for award if its protest were sustained, Tektronix has the direct economic interest necessary to be an interested party. See R.H. Whelan Co., B-203248, Aug. 11, 1981, 81-2 CPD ¶ 123.

Tektronix first argues that the apparent mistake in Biddle's bid was not a clerical mistake subject to correction under FAR, 48 C.F.R. § 14.406-2. We agree. Section 14.406-2 authorizes the contracting officer to correct a clerical mistake in a bid without further agency approval after receiving verification of the intended bid from the bidder, provided that the intended bid is evident from the face of the bid. See Engle Acoustic & Tile, Inc., B-190467, Jan. 27, 1978, 78-1 CPD ¶ 72.

Here, the contracting officer apparently concluded that the error in the Biddle bid was due to the obvious misplacement of a decimal point, one example of a clerical mistake subject to correction by the contracting officer listed in section 14.406-2(a)(1). While we agree that a mistake was apparent on the face of the bid, we find that it was not subject to correction as a clerical mistake since the intended bid could not be determined from the face of the bid as required by section 14.406-2.

An error in a unit price is subject to correction as a decimal point error, for example, when the extended price is either one-tenth or ten times greater than the

^{1/}The total bids consist of the extended prices for the basic and option quantities of the reflectometers plus the option prices for the related technical data.

actual product of multiplying the unit price by the stated quantity. Russell Drilling Co., B-218577, July 25, 1985, 64 Comp. Gen. ____, 85-2 CPD ¶ 87; see also Engle Acoustic & Tile, Inc., B-190467, supra. In such cases, the discrepancy between the unit and extended prices reveals both the existence of the mistake and the intended bid. Thus in this case, if Biddle's extended price had been \$350,000, for example, the contracting officer reasonably could have concluded that the intended unit price was \$3500 by dividing the extended price, which on its face would have seemed reasonable, by the option quantity. Because the extended price here was consistent with the unit price, however, the intended price was not evident from the face of the bid. The error could as reasonably have been due to a typographical error as a decimal point error; for example, instead of \$3500, the intended unit bid price may have been \$3350 or \$3735, prices equally consistent with the other bid prices. In addition, since Biddle's unit price for the basic quantity was \$3940, not \$3500, the basic bid gives no indication that the intended unit price for the option quantity was \$3500. As a result, since the intended bid was not ascertainable from the face of the bid, it was improper to allow correction under section 14.406-2 as a clerical error. See Sundance Construction, Inc., B-182485, Feb. 28, 1975, 75-1 CPD ¶ 123 (correction as a clerical mistake was improper where intended bid could not be obtained by multiplying the unit price by the unit quantity.)

We agree, however, that a mistake was apparent on the face of the bid, since Biddle's option price (\$3.50) was so obviously low when compared with its bid for the basic quantity (\$3940) and the Tektronix bid (\$3800). Whether it was appropriate to allow the bid to be corrected therefore should have been determined under FAR, 48 C.F.R. § 14.406-3, which prescribes procedures for resolving mistakes not clerical in nature. Under section 14.406-3(a), a bidder which so requests may be allowed to correct its bid if both the mistake and the intended bid are established by clear and convincing evidence. In our view, the price sheet provided by Biddle, the only evidence Biddle submitted, is not sufficient to establish the intended bid, particularly in light of the substantial amount of the error and the relatively small difference between the corrected bid and the Tektronix bid.

While the mistake-in-bid rules are intended to permit relief to bidders who make genuine mistakes in their bids, the paramount concern of the rules is the protection of

the competitive bidding system. Panoramic Studios, B-200664, Aug. 17, 1981, 81-2 CPD ¶ 144. The potential for abuse resulting from a decision to allow correction is protected against by the high standard of proof necessary before correction is permitted. American Museum Construction Division of Byer Industries, Inc., B-210022, Mar. 31, 1983, 83-1 CPD ¶ 337. In examining whether there is adequate evidence to establish the intended bid, bidders' worksheets have been found sufficient where they show how the mistake was made and how the intended bid was calculated. Compare Coleman Industrial Construction Co., B-207682, Sept. 8, 1982, 82-2 CPD ¶ 213 (correction was reasonable where detailed worksheets showed how the intended bid was calculated and that mistake was due to clerical error in transcription from worksheets to bid form) with Fortec Constructors, B-203190.2, Sept. 29, 1981, 81-2 CPD ¶ 264 (correction was unreasonable where worksheets did not show how amount of markup was calculated) and Treweek Construction, B-183387, Apr. 15, 1975, 75-1 CPD ¶ 227 (correction was unreasonable where worksheets did not show formula for calculating bond premium to be added to intended bid).

Here, the price sheet submitted by Biddle itemizes its own costs per unit (a total of \$2309.70), but gives no indication of how the \$3500 unit price was calculated; the sheet merely has the following notation at the bottom: "recommended selling price for 2nd-100 units \$3,500." In fact, using the overhead formula shown on the price sheet, Biddle's minimum list price per unit would be \$3857.20 (\$2309.70 cost times the 1.67 overhead factor); using this minimum list price as the intended option price, Biddle's total bid would be higher than the Tektronix bid. Given that the amount of the asserted error is substantial, raising Biddle's bid by \$349,650, and the difference between the corrected bid and the Tektronix bid is only \$21,254.50, or 2.7 percent, we find that Biddle's price sheet, which lacks any indication of how the intended bid was calculated, does not constitute the clear and convincing evidence required under FAR, 48 C.F.R. § 14.406-3(a), to permit the significant upward correction of Biddle's bid in this case. See Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125. As a result, since the mistake was apparent from the face of the bid, but the intended bid was not established by clear and convincing evidence, it was improper to allow Biddle to correct its bid. Instead, the appropriate remedy was to allow Biddle to withdraw the bid.

The Marine Corps argues that Solon Automated Services, Inc., B-214170, Sept. 25, 1984, 84-2 CPD ¶ 350, in which we upheld the agency's decision to allow correction, is analogous to this case. We disagree. In Solon, the awardee had offered the same unit and extended prices for the base year and two option years, even though the quantities of equipment covered by the solicitation increased in the option years. We noted that, because of the format of the solicitation, the provision advising bidders of the increased quantities for the option years was easily overlooked, and, in fact, a majority of the bidders had failed to increase their extended prices. In addition, the awardee's intended unit price was evident from the bid, and, as a result, the total price was ascertainable simply by multiplying the unit price by the correct quantity. Here, in contrast, neither the unit price nor the extended price indicates Biddle's intended bid; the only evidence offered is the bare notation on Biddle's price sheet.

By separate letter to the contracting agency, we are recommending that Biddle's contract be terminated for convenience and that award be made to Tektronix if the firm is otherwise eligible.

The protest is sustained.

for Milton J. Fowler
 Comptroller General
 of the United States