



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aztech Electric, Inc. and Rod's Electric, Inc.
File: B-223630
Date: September 30, 1986

DIGEST

1. Bidder may elect not to charge for certain item and if bidder indicates commitment to furnish item in question--as by inserting "\$0" in its bid--its bid is responsive.
2. Submission of a below-cost bid is not illegal and the government may not withhold award merely because a responsive bid is below cost.
3. Although an obviously erroneous bid may not be accepted even if verified by bidder, contracting agency acted properly in accepting verified bid offering one line item at no charge since the bid was not obviously erroneous. Disparity between no-cost bid and government estimate and other bids does not establish a mistake was made, since a bidder in its business judgment may decide to bid no-charge and submit a below-cost bid.

DECISION

Aztech Electric, Inc. and Rod's Electric, Inc., a joint venture, protests any award to Southeastern Electric Construction, Inc. under invitation for bids (IFB) No. DACA67-86-B-0030, issued by the United States Army Corps of Engineers, for all labor, materials and equipment necessary to upgrade the primary distribution system at Fairchild Air Force Base, Washington. The protester contends that Southeastern's bid should have been rejected because it contained a price of "\$0" for one of the line items under the IFB. We deny the protest.

The IFB was issued on May 6, 1986, with bid opening on June 27. Seven bids were received. The proposed awardee, Southeastern, submitted the lowest bid; the protester was the second lowest bidder. The IFB called for bids on four line items. Line item 3 was for manholes and called for unit and extended prices for two sub-items, (a) the first 1,000 linear feet, and (b) any additional quantity, estimated at 250 linear feet. The total government estimate for line item 3

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was \$181,250. In its bid Southeastern inserted unit and extended prices of "\$0" for both sub-items under line item 3. In response to a request from the contracting officer, Southeastern verified its bid as accurate by letter dated July 7.

The protester first contends that Southeastern's bid was nonresponsive for failure to indicate a price for line item 3. The protester also argues that the bid should have been rejected since it is clearly a below-cost bid. We disagree. Bidders may elect not to charge the government for certain work. In such cases, a bid is responsive as long as the bidder indicates--for example, by inserting "\$0" in its bid as Southeastern did here--that it has committed itself to providing the goods or services covered by the line item in question. Baltimore Electronics Associates, Inc., B-217499, Jan. 16, 1985, 85-1 CPD ¶ 46. Similarly, submission of a below-cost bid is not illegal and the government cannot withhold award merely because a responsive bid is below cost. R.P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 CPD ¶ 39.

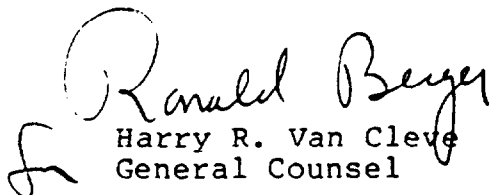
The protester next contends that Southeastern's "\$0" price for line item 3 is an obvious error and the bid therefore should not be accepted despite Southeastern's verification. By not rejecting the bid outright, the protester argues, the agency improperly gave Southeastern the opportunity to either verify its bid or claim that a mistake had been made and then withdraw or revise its bid.

As the protester notes, an obviously erroneous bid may not be accepted even if verified by the bidder. 51 Comp. Gen. 498 (1972); H. Martin Construction Co., B-201352, Apr. 8, 1981, 81-1 CPD ¶ 268. The bids at issue in Martin and similar cases were found to contain obvious errors, however, only because they involved either (1) an apparent ambiguity in the bid created by the bidder (for example, inconsistent unit and extended prices) or (2) some claim or conduct by the bidder indicating that a mistake had been made, followed by an attempt by the bidder to waive any claim of mistake in order to remain the low bidder. See G.T. Murphy, Inc., B-204351, Feb. 23, 1982, 82-1 CPD ¶ 161. Here, in contrast, there is no such obvious error in Southeastern's bid. The only objective evidence suggesting the possibility of a mistake is the disparity between Southeastern's "\$0" price for line item 3 and the government estimate and other bids for the item. That disparity does not by itself establish that a mistake was made, however, since as discussed above, a bidder in its business judgment may decide to bid no-charge and submit a below-cost bid. Baltimore Electronics Associates, Inc., B-217499, supra. Since the bid was not obviously erroneous and was verified by Southeastern, the contracting

officer was required to consider it as submitted. See
Federal Acquisition Regulation (FAR), 48 C.F.R.
§ 14.406-3(g)(2) (1985).

The protester argues that the agency gave Southeastern an opportunity to manipulate its competitive position by either verifying its bid or claiming a mistake. In this regard, the protester asserts that the agency undoubtedly would have allowed Southeastern to withdraw or revise its bid if Southeastern merely claimed that a mistake had been made. We disagree. As long as the procurement regulations permit correction of bids after bid opening, the possibility exists for an unethical bidder to abuse the system by submitting an extremely low bid and then, upon learning its competitors' prices, declaring a mistake and attempting to secure an increased award in any amount up to the second low bid. A bidder's ability to manipulate the system to its advantage in this way is limited, however, by the high standard of proof required before correction may be allowed. See FAR, 48 C.F.R. § 14.406-3; Mitchell Construction Co., Inc., B-208258, Oct. 28, 1982, 82-2 CPD ¶ 378. Thus, contrary to the protester's assertion, Southeastern could not have obtained approval to withdraw or correct its bid without providing sufficient evidence of the mistake, and in the case of correction the intended bid to satisfy the FAR requirements.

The protest is denied.


Harry R. Van Cleave
General Counsel