



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Veterans Administration-Advance Decision

File: B-225815.2

Date: October 15, 1987

DIGEST

When a bidder denies that a mistake has been made, but it is nonetheless apparent that the bid is in error, the contracting officer properly may reject the bid because of his concern about whether the bid actually intended would be low.

DECISION

The Veterans Administration (VA) requests our advance decision as to whether it may reject the bid of SMC Information Systems (SMC) on invitation for bids No. 794-1-87 for furnishing all management, labor, equipment and material to operate the warehouse section at the VA supply depot in Somerville, New Jersey, for fiscal year 1988 plus four option years. The VA believes that SMC's bid which SMC has verified contains a mistake, raising doubts regarding whether the bid is low. The VA has requested that this advance decision from our Office be based on the record it has submitted, which includes SMC's stated position. The VA further advises that SMC is aware of its request to us for an advance decision.

We conclude that the contracting officer may reject SMC's bid.

On January 30, 1987, the VA issued the solicitation in order to determine whether it would be advantageous for government personnel to continue operating the warehouse or whether a contractor operation might be more economical. The solicitation sought firm-fixed-price bids for a base period and for four 1-year option periods, and provided that for purposes of award, the bids would be evaluated by adding the total price for all options to the price for the basic requirement. The invitation also provided that a cost comparison would be conducted in accordance with Office of Management

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and Budget (OMB) Circular A-76 to compare the total price of the lowest responsible bidder to the government's estimate (submitted in the form of a bid) of the cost to do the work in-house using the most efficient organization. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.207-1 (1986).

The VA received and opened three bids on June 26, 1987, including the government's estimate for in-house performance. The total bid prices were as follows:

SMC Information Systems	\$3,520,836.81
Government In-House	5,083,433.00
XPress Trucking	10,970,674.00

In examining the bids, the contracting officer noted with regard to bid item 3, receiving, that SMC's bid seemed grossly out of line with the other bids submitted. The record indicates that bid item 3 involves handling 10,500 items (approximately 24,000 tons) per year and shipping these items. This task includes the loading and unloading of many trucks each day, palletizing stock, receiving and separating mail, taking stock samples, maintaining paperwork and processing receipt documents. The item 3 unit prices were as follows:

	<u>SMC</u>	<u>XPress</u>	<u>In-House</u>
Base Year	\$2.2117	\$42.57	\$25.167
1st Option	1.7080	44.70	24.0878
2nd Option	1.7563	46.94	22.8583
3rd Option	1.7362	49.28	21.6589
4th Option	1.7342	51.75	20.6589

Accordingly, the contracting officer notified SMC by telephone that a mistake was suspected and requested SMC to review and verify its bid.

On June 29, SMC called the contracting officer to request another copy of the statement of work and the applicable Department of Labor wage determination, explaining that its estimator had left SMC and had shredded all documentation related to SMC's bid prior to leaving. The contracting officer provided the information requested, and by letter of July 6, SMC confirmed its price. Not satisfied, the

contracting officer wrote to SMC on July 8, noting that based on the wage determination and other calculations, it appeared that SMC proposed to perform the receiving operation with one employee. Referring to the statement of work, the contracting officer reiterated the multitude of tasks encompassed in bid item 3, pointed out the discrepancy between SMC's bid and the other bids and asked SMC to review its bid a second time.

SMC asked for a meeting, which was held on July 13. The representative of SMC explained that SMC's bid was based on a total of \$3,520,836.31 but that in breaking the total price down by line items a 70-27-3 percentage apportionment had been made. SMC stated that SMC's total price was correct but should be apportioned to line items 1-3 in a 60-10-30 ratio. SMC's counsel declined to request bid correction and stated that SMC would only adjust figures among line items if so requested by the VA. By letter of July 24, 1987, SMC reconfirmed its bid.

On August 26, the contracting officer prepared a determination that acceptance of the SMC bid would be unfair to other bona fide bidders and forwarded that determination to the VA official empowered to make determinations regarding mistakes in bid. In turn, the VA has requested an advance decision from our Office as to the propriety of rejecting SMC's bid.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(g)(5) (1986), provides that,

"Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (1) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented."

We agree with the contracting officer's decision, based on this FAR provision, that it would be unfair to other bidder's if SMC's bid were to be accepted as submitted.

Although SMC has not actually claimed that its total price is a mistake, it admitted an error in its item 3 price and indicates it should be 10 times higher than the price bid.

In addition, SMC's item 3 price is significantly below the government estimate and the price of the only other private competitor, XPress Trucking. The agency also reports that based on SMC's item 3 price, SMC could pay only 1.16 employees for the work, where the government calculates 7.67 employees were used in 1986, and the other bidder has estimated an even higher number of employees as necessary. Further, SMC's total bid price is two thirds of the government estimate and one third of the only other commercial competitor. In our view, these factors reasonably raise a doubt about the bid and properly resulted in the verification request. Prince Construction Co., 63 Comp. Gen. 200 (1984), 84-1 CPD ¶ 159.

SMC contends its total bid was correct and only its unit prices were in error, but it appears just as logical to presume that the total bid was derived from the unit prices, so that if unit prices are in error, the total bid is in error. See Porterhouse Cleaning and Maintenance Service Co., Inc., B-225725, May 18, 1987, 87-1 C.P.D. ¶ 522.

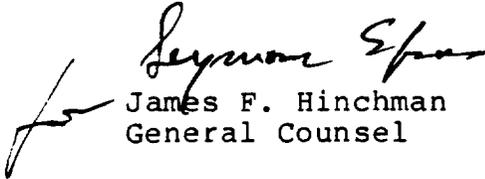
In any event, SMC has offered no convincing evidence to support its bid as submitted, nor apparently can it, as all the paperwork used to compute SMC's bid has been destroyed by the former employee.^{1/} Due to this inability to submit the requested evidence concerning the suspected bidding error, SMC makes it impossible for the contracting officer to make any supportable determination that SMC would have been low bidder in any event. The record does indicate that the government may have submitted its bid on a total price basis, assigning values to various bid items based on their estimated percentage of total cost, but there is no convincing evidence that SMC took a similar approach. In fact, assuming SMC's explanation to be true, that only its allocation of bid prices were in error, this suggests a probable error in its price for line item 2. If line item 2 was 27 percent of the total bid and should have been 10 percent, then line item 2 would be out of line with other bids submitted--one third of the government estimate and one-eighth of XPress' bid.

^{1/} The loss of SMC's working papers may also be significant since we have previously considered that evidence of ill will between a bidder and its former employee who prepared the bid lends credence to the belief that errors may have been made in preparing the bid. Yankee Engineering Co., Inc., B-180573, June 19, 1974, 74-1 CPD ¶ 333.

A contracting officer must reject an apparently mistaken bid if it is not clear that the bid would have remained low absent the mistake. H. Martin Construction Co., B-201352, Apr. 8, 1981, 81-1 CPD ¶ 268. In these circumstances, we find it was reasonable for the contracting officer to be concerned that SMC's bid would not have been low if an error had not been made, without some substantive evidence to the contrary. See Panoramic Studios, B-200664, August 17, 1981, 81-2 CPD ¶ 144.

As to SMC's verification of the bid as submitted in order to obtain award, although a verification generally serves to bind a bidder, see General Time Corp., B-180613, July 5, 1974, 74-2 CPD ¶ 9, it is well-established that an obviously erroneous bid may not be accepted even if it is verified. 51 Comp. Gen. 498 (1972). As we have already determined, the contracting officer acted reasonably in concluding that SMC's verification cannot serve to negate the indication of a mistake. Prince Construction Co., supra.

We conclude that the bid may properly be excluded from consideration for award.


James F. Hinchman
General Counsel