



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Jewett-Cameron Lumber Corporation

File: B-227471

Date: October 21, 1987

DIGEST

Bid sent by the protester's own telex equipment and containing a bid price in the form of garbled letters properly is rejected, notwithstanding that the numbers on the same keys as the garbled letters allegedly represent the intended price, where there is no showing that confirming bid was mailed and was outside of the bidder's control prior to bid opening, and there is no other evidence of intended bid that was outside bidder's control prior to bid opening.

DECISION

The Jewett-Cameron Lumber Corporation protests the rejection of its telegraphic bid as nonresponsive under invitation for bids (IFB) No. DLA720-87-B-0338, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for 4,000 sheets of treated plywood. DLA rejected the bid because it did not contain a firm, fixed price; where the protester intended to indicate its item price, the telex read, "ITEM PQ WTMYE." The protester points out that the garbled letters are on the same keys of a telex machine as the numbers "01 25.63," allegedly intended by the protester. The protester contends that it properly transmitted the intended message on its equipment and that the problem of printing letters instead of numbers was caused by the failure of DLA to maintain its telex equipment. The protester argues that its bid should be accepted based on its intended bid of "ITEM 01 25.63."

We deny the protest.

The IFB incorporated the standard "Telegraphic Bids" clause, Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-13 (1986), which expressly authorizes the submission of telegraphic bids. At a unit price of \$25.63 per sheet, Jewett-Cameron's telegraphic bid would be low. The agency rejected the bid, however, because there was no price, and there was no indication of any malfunctions by DLA's telex

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equipment immediately before or after the transmission of the telex.

Where the protester alleges an error in the transmission of a telegraphic bid sent, as here, by equipment, personnel, or facilities under the bidder's control, the record must establish by independent evidence (outside the bidder's control) that the error occurred after the message was sent, see 49 Comp. Gen. 417 (1970), or that there was government mishandling in the process of receipt. See Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD ¶ 331. Otherwise, the bidder must bear the responsibility for the accuracy of its bid as actually received by the contracting agency, since the bidder selected the medium for submitting the bid. Hygrade Food Products Corp., B-183432, June 10, 1975, 75-1 CPD ¶ 355.

While the protester alleges that the error was caused by a malfunction of DLA's equipment resulting from DLA's failure to maintain the equipment, the protester also states that it was advised by Western Union that an electrical storm or power surge could have caused the receiving telex machine not to switch from typing letters to typing numbers. Based on this and the agency's reporting that no such errors occurred in other messages during the same general period, we believe that the record fails to show any fault of the government or its equipment in the process of receipt. The protester has presented a copy of the telex containing the correct price which allegedly was printed on its machine from the same tape used to transmit the message to DLA. Since the tape was in the protester's control after bid opening, however, and, as we recognized in a prior case, such a tape can be altered to support a protester's contentions, Hygrade Food Products Corp., B-183432, *supra*, we do not regard the protester's copy of the telex to be independent evidence of the message sent, or that the error in transmission of the bid occurred after the message was sent.

The question remains whether Jewett-Cameron's intended bid can be said to be apparent on the bid's face such that the award of a contract would obligate Jewett-Cameron to perform at a firm, fixed price. Jewett-Cameron argues that its intended price essentially was included in a code that could be resolved by reference to any telex machine keyboard. The bid abstract shows, moreover, that the allegedly intended price is consistent with the prices of the other bidders (ranging from \$25.64 to \$26.94). While DLA concedes both that the garbled letters in the telex correspond to the numbers "01 25.63" on a telex machine's keyboard, and that an electrical storm or a power surge could have caused the receiving machine not to switch from typing letters to

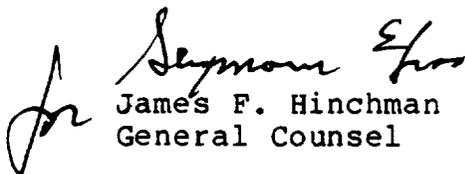
typing numbers, the agency points out that the telex it received also contained random typographical errors involving different keys (as opposed to an error of a different case of the same key); DLA maintains that there thus is no assurance that the letters representing the allegedly intended numbers in the bid price do not incorporate a similar random error.

While the explanation offered by Jewett-Cameron is feasible, we nonetheless must agree with DLA that, under these circumstances, Jewett-Cameron's intended price cannot be considered sufficiently definite to warrant accepting the bid. An explanation that is merely feasible does not go the necessary further step of assuring that a bidder did not have an improper opportunity to establish its bid price after other bids were exposed. This possibility, can be discounted only where there is some evidence of the allegedly intended bid that was outside the bidder's control prior to bid opening. No such evidence has been presented here.

We note that the protester did mail a confirming written bid, as required by the Telegraphic Bids clause, which contained a unit price of \$25.63, but the protester's own submissions indicate that the confirming bid could have been mailed any time on the day of bid opening, which occurred at 10:30 a.m. Eastern Standard Time (EST), or 7:30 a.m. in the protester's time zone (Oregon). While the confirming bid's envelope bore a postage meter stamp dated the day before bid opening (the telex was sent at 7:27 p.m EST), the postage meter was in the protester's control, and thus does not independently show the date of mailing. Since the record lacks evidence establishing that the confirming bid was mailed and outside of the protester's control prior to bid opening, it is not sufficient to establish the allegedly intended bid.

We conclude that Jewett-Cameron's bid lacks a definite price and properly was rejected. See Harris Construction Company, Inc., 64 Comp. Gen. 628/(1985), 85-1 CPD ¶ 710, aff'd, Harris Construction Company, Inc.--Request for Reconsideration, 64 Comp. Gen. 702/(1985), 85-2 CPD ¶ 92.

The protest is denied.


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