



The Comptroller General
of the United States

Washington, D.C. 20548

Casper - PL

Decision

Matter of: Western Roofing Service--Reconsideration

File: B-228421.2

Date: November 24, 1987

DIGEST

Where the low bidder alleges its bid was mistaken but submits no evidence to support the allegation, the government may award the firm the contract where the bidder is willing to accept award at the original bid price and the bid would be low even if corrected.

DECISION

Western Roofing Service requests that we reconsider our October 20, 1987, dismissal of the firm's protest concerning the planned award of a contract to American Pacific Roofing, the low bidder under invitation for bids (IFB) No. F04666-87-B-0036, issued by the Air Force for reroofing the facilities at Beale Air Force Base, California. We deny the request for reconsideration.

Western, the second low bidder, complained in its protest that the Air Force should have allowed American to withdraw its low bid after the firm claimed there was an error in the bid. We dismissed the protest on the basis that Western, as the higher bidder, did not have standing to challenge the Air Force's refusal to allow American to withdraw its bid based on its claim of mistake, since American was prepared to accept award at the price actually bid and American's bid, if corrected, would remain low.

Western now requests reconsideration of our prior dismissal arguing that, since American did not present any evidence of mistake to the Air Force, it is not clear that American's bid would be low under any circumstances.

We find nothing in the firm's request for reconsideration that meets its burden to show that our prior dismissal was legally or factually wrong. See 4 C.F.R. § 21.12 (1987). The record establishes that American, in a letter received by the Air Force after the August 24, 1987, bid opening and dated the day of bid opening, stated that there was a

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mistake in its bid and asked that the government remove the bid from consideration. The letter indicated that American had not included subcontractors' bids totaling \$530,346. If corrected, American's bid would be \$1,919,946; uncorrected, its bid is \$1,389,600. Western's bid is \$1,989,000. The government estimate is \$1,503,500.

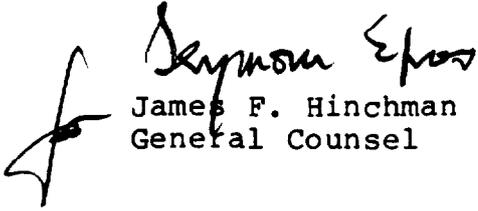
The Air Force asked American to submit evidence supporting the claim of mistake. No such evidence was forthcoming. The Air Force contacted American again and American stated that it was prepared to accept the contract at the original bid price. The Air Force plans to award the contract to American at the original bid price when funding is received.

Under the mistake-in-bid rules applicable to allegations of mistake after bid opening but before award, where the bidder fails or refuses to furnish evidence in support of an alleged mistake, the contracting officer must consider the bid as submitted. Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(g)(5) (1986). The only exceptions to that rule involve situations where (1) the amount of the bid is so far out of line with the amounts of other bids received, or with the amounts estimated by the agency or determined by the contracting officer to be reasonable, or (2) 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 and other bona fide bidders. Thus, a bidder may not avoid an award simply by claiming mistake and then failing to substantiate the claim unless there is reason to believe the claim is legitimate, and award to the firm would be unfair. See Duro Paper Bag Mfg. Co., 65 Comp. Gen. 186 (1986), 86-1 C.P.D. ¶ 6.

Here, although American's original bid price is out of line with the amounts of the other bid received, it is only \$113,900 below the government estimate of \$1,503,500, and the bid does not contain any other indications of error on its face, according to the Air Force. Moreover, American evidently has abandoned any claim of mistake, and has specifically stated that it will accept award at the original bid price. Thus, acceptance of American's bid would not be unfair to American. Nor would acceptance of American's bid be unfair to other bona fide bidders since American's original and corrected bids would be low under the facts as presented. Western's speculation that American's intended bid may be other than American initially

claimed is not sufficient evidence to justify the conclusion that it would be unfair for the government to accept the low bid.

The request for reconsideration is denied.



James F. Hinchman
General Counsel