

Hutchinson BL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: North Landing Line Construction Co.

File: B-228363

Date: December 23, 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 the award at the original bid price and the bid would be low even if corrected.

DECISION

North Landing Line Construction Co. protests the contract award to James W. Tabor & Sons, Inc., under invitation for bids (IFB) No. 590-088, issued by the Veterans Administration (VA) for electrical system modernization at the VA Medical Center, Hampton, Virginia. Three additive items of work were to be added to the base bid item provided funds were available at the time of bid opening.^{1/} The protester contends that Tabor's bid should have been rejected because it contained an error.

We deny the protest.

The IFB was issued on August 14, 1987, resulting in four bids, which were opened on September 23. The proposed awardee, Tabor, submitted the lowest aggregate bid of \$1,501,466; the protester, North Landing Line Construction, was the second lowest bidder with an aggregate bid of \$1,661,500. After bids had been opened on September 23, Tabor requested information concerning procedures for withdrawing an erroneous bid after bid opening, apparently indicating that it had omitted the cost for a generator required by the second additive item. According to Tabor in

^{1/} When additive items are used, the government seeks a base bid price which includes all of the features desired for the particular construction project. The additive items are in effect options exercised at the time of award to increase the scope of work for which funding is available.

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its comments on the protest, it requested the information because it was concerned that the VA could "award the alternates and the base bid to any one contractor or could divide the alternates and the base bid and award separate contracts to separate contractors." The VA contracting officer requested that Tabor submit all pertinent documentation required to prove the existence of any error in Tabor's bid.

According to Tabor, it subsequently determined that

"one contractor would be awarded the sum total of the Base Bid, Alternate No. 1, Alternate No. 2 and Alternate No. 3...[and that]...[u]pon review of our job take off our firm discovered that money had been appropriated in the base bid for Alternate No. 2 and therefore, if the overall bid package was accepted our firm could complete the project within the job plans and specifications and with an end profit for our firm."

Consequently, on September 24, Tabor informed the VA contracting officer that it would accept the project and perform the contract at its bid price. The VA contracting officer then requested that Tabor confirm its bid price and rescind what the VA regarded as its verbal request to withdraw its bid. Tabor did this by telegram dated September 25. On September 30, the contract was awarded to Tabor for the base bid and all three additive items, since adequate funding was available at the time of bid opening.

On September 30, North Landing Line filed its protest in our Office, arguing that Tabor's bid should be rejected as obviously erroneous because it "had not included the cost of a generator required by the contract" and that Tabor "has acknowledged that its low bid was based on an error omitting [this] key item of equipment." North Landing Line argues further that the award of the contract to Tabor is improper without proof by Tabor that its bid would remain low even if corrected to include the omitted equipment.

On October 29, the head of the VA contracting activity involved authorized continued contract performance pursuant to 48 C.F.R. § 33.104(c)(2)(i) (1986), determining that continued performance would be in the best interests of the government.

The VA argues that Tabor's aggregate bid price includes the costs of all contract requirements. The VA points out that the cost of the generator that the protester claims is missing from Tabor's bid is simply included in the wrong bid item. As indicated by Tabor, the cost of the generator was

included in the base bid and not in alternate item No. 2 where it should have been. This is apparently what prompted Tabor's concern that the VA would award multiple contracts by splitting up the base bid and alternates. The VA concludes by pointing out that Tabor's low bid remains the same with or without correction since the low bidder was evaluated on the basis of the lowest aggregate price, including the base item and all three additive items, since adequate funding was available at the time of bid opening.

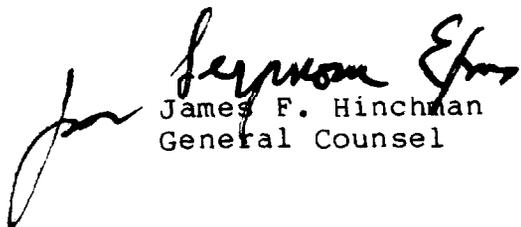
Under the mistake-in-bid rules applicable to allegations of mistake after bid opening but before award, where the bidder fails or refuses to furnish evidence in support of an alleged mistake, the contracting officer must consider the bid as submitted. Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(g)(5). 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. Western Roofing Service--Reconsideration, B-228421.2, Nov. 24, 1987, 87-2 C.P.D. ¶ ____.

Here, Tabor's aggregate bid price is not out of line with the amounts of the other bids received and is only \$341,534 below the government estimate of \$1,843,000. Nor does Tabor's bid contain any other indications of error on its face. Tabor has confirmed its bid price and has withdrawn its allegation of a mistake. Inasmuch as award was made for the base bid item and all three additive items, acceptance of Tabor's bid cannot be viewed as unfair to other bidders since Tabor's low aggregate bid price remains the same whether corrected or not for the only error that the record indicates was made here--the inclusion of some of the additive No. 2 work in the base bid price.

To the extent North Landing Line is concerned that the VA somehow gave Tabor an opportunity to manipulate its competitive position by choosing either to verify its bid or claim a mistake and withdraw, we point out that a bidder's ability to manipulate the mistake-in-bid procedures to its advantage

in this way is limited by the high standard of proof required before withdrawal after bid opening may be allowed. See Aztech Electric, Inc. and Rod's Electric, Inc., B-223630, Sept. 30, 1986, 86-2 C.P.D. ¶ 368.

The protest is denied.


James F. Hinchman
General Counsel