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Henry Hufford

Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187012

DATE: November 17, 1976

MATTER OF: Indusco Industries, Inc.

DIGEST:

Mere fact that discount term offered in bid is very low does not justify correction of bid mistake which would result in displacement of another bidder since mistake and bid actually intended are not ascertainable substantially from bid itself.

Indusco Industries, Inc. (Indusco) protests the refusal of the Defense Supply Agency (DSA) to allow correction of an alleged mistake in the prompt payment discount terms of its bid under invitation for bids (IFB) DSA400-76-B-3620, for the purchase of various types of cellular plastic sheets. If correction is allowed Indusco would become the low bidder.

Indusco's bid as initially submitted provided no prompt payment discount. By telegraphic modification of its bid, received before bid opening on April 15, 1976, Indusco amended its bid as follows:

"Page one item 16 discount terms change from net percent ten days to read .0025 percent 20 days all other terms and conditions remain as quoted."

Indusco's bid was evaluated using the specified discount term. As a result, the bid of National Distributing Company (National) (as increased after an error on the face of its bid had been corrected) was found low for the entire procurement.

On April 30, 1976, the contracting officer called to request a clarification of Indusco's discount. Apparently in response to this request, Indusco wrote the contracting activity that "we amended our discount terms via telegram to read 1/2 of 1% 20 days in lieu of Net." The use of Indusco's discount terms as stated after bid opening would result in Indusco's bid being low for the entire procurement. However, DSA notified Indusco that its bid would be considered

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based on a discount of .0025 percent. Indusco then protested to this Office. Award has been postponed pending resolution of the protest.

DSA's position is that neither Indusco's bid nor the solicitation provided any indication that Indusco intended to offer a prompt payment discount other than .0025 percent. Since Indusco's alleged error was not apparent on the face of its bid, DSA believes that the bid is not subject to correction. DSA contends that correction would be improper inasmuch as the application of the amended discount of .0025 (or .25 percent) would displace National's low bid and neither the existence of the mistake nor the bid actually intended can be ascertained substantially from the invitation and the bid itself.


Indusco admits that its telegram to DSA may have contained a typographical error in the discount terms, which it believes occurred during transmission. In this connection, we note that the record does not indicate that the telegraph company admits the error and has a record of the message intended to be sent. Cf. 49 Comp. Gen. 417 (1970). Indusco contends that its letter of April 30, 1976, restating its discount terms, was in response to the contracting officer's request of the same date for clarification of those terms and argues that a discount of .0025 percent would reflect such an insignificant amount that the procuring activity should have detected an apparent typographical error. Finally, Indusco has submitted evidence from its office records to show that its corporate policy dictated prompt payment discounts of at least $\frac{1}{4}$ percent, and that this policy was adhered to in this instance. It concludes that its modified discount therefore should be allowed.

We agree with DSA. Correction of a bid mistake which would result in displacement of another bidder may be allowed only where the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. ASPR 2-406.3 (1976 ed.). Where it is obvious solely from the bid itself what was actually intended, correction of a bid and displacement of another bidder is allowed. Federal Aviation Administration - Bid Correction, B-187220, October 8, 1976, 76-2 CPD _____. In most cases where correction and displacement have been allowed, the intended bid was determined from something in the bid itself, such as a consistent pattern of bidding (World Wide Services, Inc.,

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B-184321, February 18, 1976, 76-1 CPD 108; Dyneteria, Inc., B-184321, July 14, 1976, 76-2 CPD 42, which reconsidered World Wide Services, Inc.) or a discrepancy between a unit and the extended price where on the basis of logic and/or experience, it can be determined that one price makes sense while the other does not. See Federal Aviation Administration - Bid Correction, supra, and the cases cited. Here, however, the most that can be said from examining Indusco's bid is that a mistake may have been made in its discount terms. No doubt the contracting officer suspected that a mistake may have been made, since the extent of the discount offered (.0025 percent) is very low. In fact, Indusco has submitted evidence from its office records indicating that the discount intended was .25 percent rather than .0025 percent. Nevertheless, the mistake and the intended bid are not ascertainable solely from Indusco's bid. As a result the bidder could have insisted after bid opening that its bid should be evaluated based on its offered discount of .0025 percent. In other words, the Government was not in a position to determine from Indusco's bid what discount was actually intended. In the circumstances, we believe that correction and displacement are not appropriate.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States