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DECISION



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

FILE: B-190598

DATE: January 18, 1978

MATTER OF: Advanced Equipment Company, Inc.

DIGEST:

Request for reformation of contract due to mistake in bid alleged after award is granted since contracting officer should have known of the possibility of error in view of disparities between low bidder's and second low bidder's prices. Therefore, correction may be allowed, but not to exceed price that was offered by second low bidder.

The General Services Administration (GSA) has requested our decision regarding an error Advanced Equipment Company, Inc. (Advanced), alleges was made in its bid after award for steel shelving to be furnished to 10 geographic zones.

Solicitation No. 8FPO-C5-30056, issued on January 21, 1977, sought bids for a 1-year requirements contract for shelving, storage and display, steel, clip-type, whose term would extend from April 1, 1977, through March 31, 1978. The following three companies submitted bids: (1) Advanced, (2) I. Hyman Corp. (Hyman), and (3) Frontier Manufacturing Co.

The solicitation, with regard to the method of award, provided:

"Award will be made in the aggregate by group for each zone. The low aggregate offeror will be determined by multiplying the unit price submitted on each item by the estimated quantity specified, and adding the resultant extensions. In order to qualify for an award on a group for a zone, prices must be submitted on each item within the group for the zone."

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Pursuant to this, award, for all 10 geographic zones, was made to Advanced, the low bidder, on March 22, 1977.

Subsequent to award, initially by telephone (June 29, 1977), with confirmation by letter (July 8, 1977), Advanced notified GSA that an error in calculating its bid price for each zone had been discovered. The record indicates that Advanced utilized a formula which consisted of three elements: (1) cost of an item to Advanced, (2) mark-up, and (3) freight, all expressed as a stated percentage of the manufacturer's list price, to determine the bidding price for each zone. Advanced designated 50 percent for element number 1 and 7.5 percent for element number 2, both of which remained constant for all 10 geographical zones. Element 3, on the other hand, had to be adjusted for each zone.

Advanced, in its July 8, 1977, letter explained how it calculated the freight factor for zone 1, how this calculation related to the bid prices of the other zones and how the alleged error occurred. The letter, in pertinent part, reads:

"* * * To arrive at the bidding price for Zone 1, we took the total weight of 1 each items 1 thru 13, 180 lbs. and multiplied this by the freight rate of \$16.70. We divided the product by the list price of the total of the same items (\$30.07 = \$146.96) to get a freight factor of .2046. However, this was erroneously picked up as .285.

We added:	Cost of goods	50.000
	Mark-up	7.500
	Freight	2.850
		<hr/>
		60.350

Instead of:	Cost of goods	50.000
	Mark-up	7.500
	Freight	20.460
		<hr/>
		77.960

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"To arrive at our bid price, we then multiplied the list price of all items in Zone 1 and 2 by .6035 instead of .7796.

"To arrive at a multiplier for Zone 3 and 4, we took the Zone 3 and 4 freight rate, \$20.00, and subtracted the Zone 1 freight rate of \$16.70; and divided the difference by 200 lbs. The quotient of .0165 was added to the multiplier of Zone 1, .6035, giving us a new multiplier of .62 for Zones 3 and 4. Had we correctly used .7796 as a base, our multiplier would have been .7961. We repeated this procedure for Zones 5, 6, 7, 8, and 9 & 10."

Consequently, the initial misreading of the freight factor affected the bid price of each zone.

In support of its allegation, Advanced submitted, among other documents, a worksheet entitled "Bid calculations BFPQ-C5-30036 due February 22, 1977" which was used for figuring the freight factor. At the bottom of page 1 is the notation, "30.06 ÷ 146.96" with a quotient that was not very legible, making it susceptible to a misreading. We note that the correct quotient is 0.2046, as stated above.

GSA, in addition to examining Advanced's allegations and supporting documents, reviewed its file to determine whether or not the contracting officer had actual or constructive notice of the possible mistake prior to award. The investigation disclosed substantial disparities between the bid prices of Advanced and those of the second low bidder, Hyman. The percentage differences between Advanced and Hyman ranged from a high of 34.8 percent to a low of 12.1 percent and it is noted that there were only two zones where the percentage was less than 20 percent—those located near Hyman and thus involving lower freight charges. Based on the above, GSA determined that clear and convincing evidence existed as to the occurrence of a mistake, as well as the intended bid, and that the contracting officer, after considering all the facts and circumstances, should have known of the possibility of error. This determination was concurred in by the contracting officer.

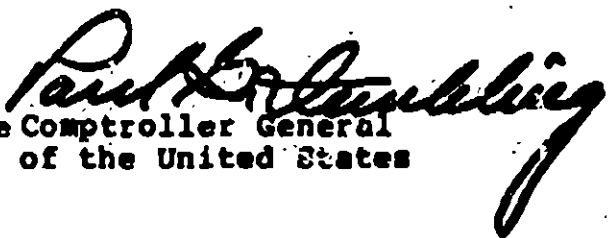
We also agree that a mistake in bid occurred and that the contracting officer was on constructive notice of a possible

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mistake in bid prior to award and should have requested verification. Therefore, relief may be granted.

Notwithstanding, when the mistake in bid is corrected Advanced is low bidder for only five of the 10 geographic zones (zones 1, 2, 3, 9 and 10), with Hyman as low bidder on the remaining five zones. Accordingly, we would interpose no objection to reformation of the contract concerning zones 1, 2, 3, 9 and 10 allowing increased payment to reflect Advanced's established error.

With reference to the remaining zones, generally, we would take exception to any reformation and require rescission. However, since the contract is close to the end of its term, rescission is no longer practical. We therefore would not take exception to reformation of the remainder of the contract to reflect Advanced's established error for those zones not to exceed the price that was offered by the second low bidder.


For The Comptroller General
of the United States