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**DECISION**



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

**FILE:** B-220649 **DATE:** February 21, 1986  
**MATTER OF:** Wynn Construction Company

**DIGEST:**

A low lump-sum bid that exceeds the statutory price limitation for a line item may be corrected to reallocate prices to another item where the lump-sum price remains unchanged, no prejudice to the competition or the competitive bid system occurs as a result of correction and the bid, as corrected is not materially unbalanced.

Wynn Construction Company protests the award of a contract for the repair and renovation of an enlisted personnel's dining hall to Derrick Construction Company under Department of the Air Force solicitation No. F34650-85-B-0322. Wynn contends that Derrick's bid price included \$250,000 for one of four line items that were subject to an overall statutory cost limitation of \$200,000 imposed by the solicitation. Wynn argues that because Derrick's bid was initially found to be nonresponsive, the agency thereafter permitted Derrick to correct the mistake by reallocating its bid price over the line items so as to remove the violation of the cost limitation.

We deny the protest.

The solicitation asked for individual prices for five line items and a lump sum total for all five. Item 1 was for repair and renovation of the dining hall and items 2 through 5 required the contractor to provide concrete foundations for walk-in refrigerators, to demolish existing toilets, walls and sidewalks and construct new ones, to provide trenching and backfilling for site utilities, to provide a fire protection system, and to replace an existing roof. The solicitation noted that line items 2 through 5 were subject to a statutory cost limitation of \$200,000 and provided that a single award would be made based on the aggregate price.

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The four bids received were opened on August 27, 1985 and the prices and government estimate were as follows:

| <u>ITEM</u> | <u>DERRICK</u> | <u>WYNN</u> | <u>Bidder A</u> | <u>Bidder B</u> | <u>GOV'T EST.</u> |
|-------------|----------------|-------------|-----------------|-----------------|-------------------|
| 0001        | \$1,092,490    | \$1,388,000 | \$1,390,000     | \$1,679,340     | \$903,100         |
| 0002        | 250,000        | 40,000      | 40,000          | 70,000          | 39,118            |
| 0003        | 35,000         | 18,000      | 39,300          | 25,000          | 17,982            |
| 0004        | 20,910         | 23,000      | 19,500          | 25,000          | 33,000            |
| 0005        | 24,100         | 12,000      | 21,600          | 18,000          | 12,500            |
| Total (2-5) |                |             |                 |                 |                   |
|             | \$330,010      | \$93,000    | \$120,900       | \$138,000       | \$102,600         |
| Total (1-5) |                |             |                 |                 |                   |
|             | \$1,422,500    | \$1,481,000 | \$1,510,900     | \$1,817,340     | \$1,005,700       |

As can be seen, Derrick's total price of \$1,422,500 was low but its prices for items 2 through 5 exceeded the cost limitation by \$130,010. By letter of August 27, the contracting officer rejected Derrick's bid because it exceeded the cost limitation; on August 28, Derrick informed the contracting officer that its price of \$250,000 for item 2 should have been \$50,000. Derrick's worksheets indicated that a \$123,977 item for food service equipment and a \$66,500 item for booth seating had been erroneously included in item 2 rather than item 1. The addition of a one percent factor for the cost of the bond and a four percent factor for profit and overhead brought the \$190,477 total of these two items to \$200,077. On September 24, the Air Force permitted Derrick's bid to be corrected by increasing the price of item 1 to \$1,292,567 and reducing the price of item 2 to \$49,923. These corrections did not change the total bid price of \$1,422,500 and on September 30, the contract was awarded to Derrick for this price.

The general rule with respect to statutory cost limitations is reflected in Federal Acquisition Regulation § 36.205 (FAC 84-5, Apr. 1, 1985), which provides that contracts for construction shall not be awarded at a cost in excess of the statutory cost limitations, unless these limitations have been properly waived for the particular procurement. Thus, in the absence of a proper waiver, a bid exceeding the applicable cost limitations generally must be rejected. See Skip Kirchdorfer, Inc. and David Elder Constr. Co., Inc., B-204244, Nov. 24, 1981, 81-2 CPD ¶ 425. Also, the protester is correct in that a nonresponsive bid generally may not be made responsive after bid opening.

These general rules, however, do not require rejection of a low bid with item prices exceeding specified cost limitations if the excessive price was due to a mistake and the actual bid intended is apparent from the face of the bid. DeRalco, Inc., B-205127, Apr. 2, 1982, 82-1 CPD ¶ 296. Thus, in DeRalco, we did not object to a correction in bid price for an item that exceeded the statutory cost limitation because the correct bid was apparent from the price breakdown page included with the bid. Therefore, because the actual bid intended could be ascertained from the bid itself, the bid was responsive and subject to correction.

This is not the case here. While the relation of Derrick's item prices to those of its competitors indicated that Derrick's price for item 2 may have been in error, nothing accompanying the bid indicated the actual intended bid for item 2. Hence the Derrick bid was plainly non-responsive and therefore ordinarily not subject to correction.

Nonetheless, we have in the past permitted the correction of a nonresponsive bid--in effect authorizing a waiver of the technical nonresponsiveness of a bid--when the result would clearly not be prejudicial to other bidders and the competitive bid system would not be adversely affected. Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9. In Brutoco, the low bidder failed to acknowledge a wage rate amendment under the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982), a defect that would ordinarily require rejection of the bid. We found however, that (1) the employees were already protected from substandard wages by a union agreement that legally bound the bidder to pay wages not less than the minimum wages contained in the Department of Labor wage rate determination, and (2) that there was no prejudice to the competition or the competitive bid system by waiving the defect because the affect of the amendment on the wage rate was so minimal when compared to the difference between the low and second low bids. We think the same reasoning should be applied here because the government's interest in awarding a contract within the bounds of the statutory cost limitation can plainly be protected without prejudice to other bidders by permitting correction under normal bid correction procedures.

Here, award was to be made to the lowest bidder for the total of items 1-5. The competition was thus in reality, conducted on the basis of the total lump-sum bid for the entire project. The item breakdown appears to have

been included in the solicitation because of the \$200,000 statutory cost limitation for certain portions of the project. We fail to see how a correction to permit reallocation of the prices bid for various items to the proper item in the bid schedule, without amending the lump-sum total, can be seriously argued to be prejudicial to other bidders. We do not believe the government should be required to pay in excess of \$58,000 for what is, in effect, a bookkeeping error, so long as other bidders are not adversely affected by the mistake, and the bid does not become materially unbalanced after correction.

It has not been shown that the corrected bid is materially unbalanced, nor has it been argued that the evidence offered by Derrick was insufficient for correction purposes. We think, then, that under the circumstances of this case, the correction was proper.

The protest is denied.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel