

# DECISION



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

FILE: B-185866

61116  
DATE: July 12, 1976

MATTER OF: Allied Technology, Inc.

98310

## DIGEST:

1. GAO will not consider allegation that low bidder will attempt to recoup losses on inordinately low bid by seeking contract changes during performance since ASPR § 1-311 does not provide for rejection of bid where "buying in" is suspected. If bid is low and responsive to invitation requirements, and bidder determined to be responsible, award must be made to that bidder.
2. While GAO has right of review with respect to bid correction after bid opening but prior to award, it will not question administrative determination permitting correction unless such determination has no reasonable basis. Determination permitting correction of mistake in bid is proper where record indicates agency reasonably determined that low bidder presented clear and convincing evidence of mistake and bidder's worksheets indicate error consisted of omission of cost of first article tests from bid price.

The Electronics Division of Allied Technology, Inc. (Allied), protests the decision by the Naval Supply Systems Command to permit Esterline Electronics Corporation (Esterline) to correct a mistake in its bid and the subsequent award to Esterline.

Invitation for bids (IFB) No. N00383-76-B-0265 was issued on December 17, 1975, by the Navy Aviation Supply Office, Philadelphia, Pennsylvania, for the procurement of 10 items of electronic assemblies comprising 3 different sets and an item for data. Two bids were received on the opening date of January 19, 1976. Esterline's aggregate bid price was \$234,000 and was assumed to include the cost of first article testing. The bid prices submitted by Allied were \$408,791.99, including the cost of first article testing, and \$348,200.25 based upon the waiver of the requirement of first

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article testing. Allied as a prior producer would be entitled to receive a waiver of the requirement of the first article testing requirement. Esterline has not previously produced the equipment and would be required to perform first article tests. Three mathematical errors were apparent on the face of Esterline's bid. Correction of these errors would make the bid \$242,858 which amount was later confirmed by the bidder.

By letter dated January 21, 1976, Esterline was advised that the contracting officer suspected a mistake in its bid and that firm was requested to verify its bid prices. By letter of February 3, 1976, Esterline, advised that it had made additional mistakes in its bid and submitted an explanation of the claimed errors, the intended bid figures, and a request for correction to \$269,467. To support its allegations Esterline submitted worksheets accompanied by an affidavit by its assistant treasurer as to their authenticity.

The mistake claimed by Esterline was in neglecting to include an amount for the additional units required to be manufactured for first article test purposes and in neglecting to amortize its first article testing costs over the bid prices for the hardware items. Esterline claimed that the error had been made in the transposition of the prices from the worksheet to the bid set. On April 13, 1976, after examination of the material submitted by Esterline to indicate the error, the manner in which the error occurred, and the amount of the intended bid price, the Navy determined that correction of the bid to the claimed intended bid price was proper pursuant to Armed Services Procurement Regulation (ASPR) § 2-406.3(b) (1975 ed.). On May 12, 1976, award was made to Esterline for its intended bid price of \$269,467.

By letters dated February 2, 1976, and February 10, 1976, Allied protested to our Office that Esterline by submitting a bid that was so low that it would not permit a profit or recovery of overhead costs has violated the ASPR prohibition against "buying in." In addition, Allied alleged that Esterline's bid was so low as to evidence a clear lack of understanding of the effort involved in performing the contract, or if they did so understand their intent was to make up the cost in future negotiations or through the filing of a claim.

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Even if Allied's contentions concerning cost are correct, ASPR § 1-311 (1975 ed.) does not preclude the acceptance of below cost bids, but mainly cautions contracting officers to assure that amounts excluded in the "buying in" contract are not recouped through change orders or by follow-on contracts. Since the regulation does not provide for rejection where a "buying in" is suspected, our Office has repeatedly held that an award may not be withheld or disturbed merely because the low bid is below cost. 53 Comp. Gen. 597 (1974); 50 Comp. Gen. 50 (1970); EPSCO, Incorporated, B-183816, November 21, 1975, 75-2 CPD 338. The Navy was convinced that Esterline fully understood the Government's requirements, and that it would comply with the specifications. This Office has held that so long as the bid of the suspected "buying in" bidder is low and is responsive to the invitation requirements, and the bidder is determined to be responsible, award must be made to that bidder. ACL-FILCO Corporation, B-179835, January 29, 1974, 74-1 CPD 39. To the extent that Allied contests the affirmative determination of Esterline's responsibility, such contention will not be considered since none of the exceptions to our rule against considering such determination are not present. Commercial Envelope Manufacturing Company, Inc., B-186042, April 14, 1976, 76-1 CPD 254.

Allied contends that the rationale offered by the Navy in allowing a correction of the bid was overreaching and beyond the adjustment normally contemplated by the provisions of the ASPR. Allied also emphasizes that in its letter of February 10, 1976, that it expressed its concern to the contracting officer that the prices of Esterline were unduly low.

The contracting officer also noted that the prices quoted by Esterline were substantially lower than those quoted by Allied and the prices paid in the past for the identical materials, which was in part the reason he suspected a mistake and requested verification of Esterline's bid.

When a contracting officer has actual or constructive knowledge of a mistake, it is incumbent upon him to seek verification of the bid and the request for verification must put the bidder on notice as to the nature of the suspected mistake. Pursuant to ASPR § 2-406.1 (1975 ed.) the contracting officer made his request of January 21, 1976, that Esterline verify its prices.

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The general principles applied by our Office with regard to mistakes in bid have been stated on many occasions. In Building Maintenance Corporation, B-184271, December 31, 1975, 75-2 CPD 419, we had occasion to hold:

"Where a mistake in bid is alleged prior to award, it is the established position of our Office that to permit correction a bidder must submit clear and convincing evidence that: (1) an error has been made; (2) the manner in which the error occurred; and (3) the intended bid price. Similar basic requirements for permitting the correction of a bid are found in § 2-406.3(a)(2) (1974 ed.) of the Armed Services Procurement Regulation. The authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. Although the General Accounting Office (GAO) retains the right to review such administrative determinations, our Office will not question a factual determination permitting correction unless there is no reasonable basis for the decision. \* \* \*"

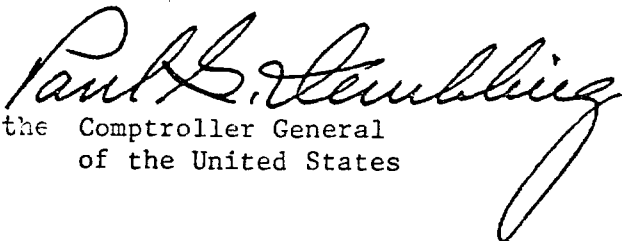
It is the position of the Navy that Esterline has submitted clear and convincing evidence of an error in its bid, the manner in which the error occurred, and the amount of the intended bid price. As such, it believes correction was proper. The Navy in its review of the Esterline worksheets and related documents, concluded that the cost for the first article tests was in fact not added to the final bid price. The amount of \$26,609 in first article costs was comprised of \$9,109 in cost of additional hardware units on which the tests were to be performed and \$17,500 for the required testing labor effort. By examining the worksheets, the Navy concluded that the test costs were to be apportioned in amounts relative to the total price of the hardware items. The Navy, by adding the test cost as apportioned to the prices initially bid by Esterline was able to obtain an adjusted unit price for the items.

After our review of the material submitted to the Navy by Esterline, we find no basis for questioning the Navy's decision to permit Esterline to correct its bid. The amount the bidder actually intended to bid can be ascertained and a reasonable

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basis exists to allow correction. Where the procedures for correction of a bid after bid opening are strictly followed so that the integrity of the competitive system is not prejudiced, the United States should have the cost benefit of the bid as corrected, provided that it is still lower than any other bid submitted. This procedure does not prejudice the other bidders, since correction will only be made upon a convincing showing of what the bid would have been at bid opening but for the mistake. In any case, this procedure is not for the benefit of other bidders, but rather it is for the benefit of the United States so it can receive the procured goods at the lowest price. 53 Comp. Gen. 232, 235 (1973).

Accordingly, in view of the above, the protest is denied.

  
For the Comptroller General  
of the United States