

DOCUMENT RESUME

03312 - [A2353478]

[Protest of Contract Award for Wall Construction]. B-188872.
August 22, 1977. 6 pp.

Decision re: Southern Plate Glass Co.; by Robert P. Keller,
Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: General Services Administration; Social
Security Administration; Seagrave Corp.: Flour City
Architectural Metals.

Authority: F.P.R. 1-2.406-3(a) (2). F.P.R. 1-2.407-3(b) (4) (ii).
B-186036 (1976). B-182050 (1974). B-183001 (1977). 53 Comp.
Gen. 232.

Company alleged that successful bidder was
nonresponsive because of failure to list parent company's name
and identification number, failure to list amount covered by
bond, and failure to use amended opening date. Protest was
denied, because failure to supply information requested does not
apply to bid responsiveness, the bid bond was responsive, and
correction of the bid does not displace any other bidder.

03312 3478
DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

George Ruppert
Proc. I

FILE: B-188872

DATE: August 22, 1977

MATTER OF: Southern Plate Glass Co.

DIGEST:

1. Record does not support protester's contention that low bidder failed to properly supply information requested in Standard Form 19-B, Representations and Certifications, which applies to responsibility of bidder and not to bid responsiveness.
2. Bid bond stated in amount of 20 percent of bid price is responsive to IFB requirement for bid bond which did not require that maximum dollar limitation be stipulated.
3. Bid which acknowledged receipt of all amendments is responsive to bid opening date which was extended by amendment.
4. Where mistake in low bid was alleged prior to award and bidder presented clear and convincing evidence of nature and existence of mistake and bid actually intended, and corrected bid does not displace any other bidder, GAO will not disturb administrative determination to allow correction since there is reasonable basis therefor.

The Southern Plate Glass Co. (Southern) protests the award of contract No. GS-03B-78040 to Flour City Architectural Metals (Flour City), a Division of The Seagrave Corporation.

The General Services Administration (GSA), Public Buildings Service, issued an invitation for bids (IFB) on February 16, 1977, for certain wall construction at the Social Security Administration Headquarters Expansion Project, Woodlawn Computer Center in Baltimore, Maryland. The following bids were received and opened on April 14, 1977:

"Flour City Architectural Metals A Division of the Seagrave Corp.	\$5,090,000
"The Southern Plate Glass Co.	\$5,984,000

B-188872

"Cupples Products Division
of H.H. Robertson Co.

\$7,867,000"

The Government's estimate for this work was \$5,750,000.

By letter dated April 25, 1977, the low bidder, Flour City, was requested to recheck its bid price and the specification requirements since its bid was out of line with the other bids. By letter dated April 27, 1977, to GSA, Flour City alleged that a mistake had been made in its bid and requested permission to correct its bid to \$5,394,000. Flour City stated that when computing its total bid price it had failed to include the sum of \$300,000 representing the costs of performing the "general conditions" work. Following GSA's review of the evidence submitted by Flour City in support of its alleged mistake, a determination was made to permit bid correction. Flour City remained the low bidder since its bid as corrected (i.e., \$5,394,000) was \$590,000 below the apparent second low bid of \$5,984,000.

Pursuant to section 1-2.407-8(b)(4)(ii) (1964 ed. amend. 68) of the Federal Procurement Regulations (FPR), a determination was made by GSA to make an award to Flour City prior to resolution of the protest. Our Office was informed of GSA's determination and award was made to Flour City on May 21, 1977.

Southern contends that Flour City's bid is nonresponsive for the following reasons set forth in its letter of May 4, 1977.

"1) Standard Form 19B, 'Representations and Certifications' did not list the 'Seagraves Corporation' as parent company nor did they list parent company ID number; 2) Bid proposal did not show 'amount that 20% of bond is not to exceed'; 3) Bid proposal form was signed for bid to be opened 3/22/77 in lieu of the correct date of 4/17/77 as required by addenda. * * *"

We do not agree that Flour City's bid is nonresponsive. GSA reports that Southern's first allegation regarding standard form (SF) 19-B is based on the erroneous assumption that The Seagrave Corporation is the parent company of Flour City. GSA states that Flour City is a division of the Seagrave Corporation and the bid was submitted and signed by the president of Seagrave Corporation. The employer identification number appearing in item 6(c) of SF 19-B (Representations and Certifications) is that of the Seagrave Corporation. Under these circumstances, which have not been refuted by any evidence of record, we believe that SF 19-B was properly executed by the low bidder. Jordan Contracting Company; Griffin Construction Company, Inc., B-125836, September 16, 1976, 76-2 CPD 250. Moreover, our

B-188872

Office has held that even if a bidder fails to complete one or another of the items on SF 19-B, such failure does not render the bid non-responsive and the information may be submitted after bid opening. L. Reese & Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255. The basis for this view is that the information called for by SF 19-B is necessary to determine the bidder's responsibility and is not necessary to decide whether the bid is responsive.

We disagree with Southern's contention that Flour City's bid bond is defective for not showing "amount that 20% of bond is not to exceed." Standard form 20 requires that the "bid guarantee shall be in the amount of 20 percent of the amount of the bid, or \$3,000,000, whichever is less." Standard form 24 provides that "the penal sum of the bond may be expressed as a percentage of the bid price if desired." Although a maximum dollar limitation may be stipulated, it is not required. Flour City's bid bond was in the amount of 20 percent of the bid price and was therefore responsive to the IFB requirements for bid bonds.

Southern's contention that Flour City's bid was nonresponsive since the bid was dated March 22, 1977, rather than April 14, 1977, the bid opening date, is also without merit. The bid opening date, originally scheduled for March 22, 1977, was extended twice until April 14, 1977, by amendments Nos. 2 and 5. Since Flour City acknowledged receipt of all amendments, it was unnecessary to enter the revised bid opening date on the bid form.

By mailgram dated May 13, 1977, Southern contends that Flour City should not be permitted to correct its bid and that the bid should be rejected because of the alleged mistake in bid. Our Office has consistently held that to permit correction of an error in bid prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred and the intended bid price. Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223; 53 Comp. Gen. 232 (1973). Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision.

FPR § 1-2.406-3(a)(2) (1964 ed. circ. 1) provides in pertinent part:

B-188872

"A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. * * *"

FPR § 1-2.406-3(d)(2) (1964 ed. circ. 1) provides:

"* * * If the bidder alleges a mistake, the contracting officer shall advise him to support his allegation by statements concerning the alleged mistake and by all pertinent evidence, such as the bidder's file copy of the bid, his original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations, if any, published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended."

The contracting officer reviewed the documentation submitted by Flour City which contained the entire summary sheets, records of sub-bids, and confirmations and notations regarding the sub-bids. Flour City stated that its price of \$5,096,000 reflects a \$300,000 error by omission of costs covering the work described in sections 0010 "General Conditions," 0112 "Supplemental Special Conditions," and 0110 "Special Conditions for All Contracts." Flour City explained that quotations had been received from two firms covering the following work:

Section 0010	"General Conditions"
Section 0112	"Supplemental Special Conditions"
Section 0110	"Special Conditions for All Contracts"
Section 03300	"Concrete"
Section 03310	"Concrete Fill in Canopy and Trellis Gutters"
Section 05100	"Structural Steel"
Section 05310	"Steel Deck"

B-18887.

Section 07125	"Elastomeric Gutter Lining"
Section 07215	"Sprayed Fire Protection"
Section 07570	"Roof Walkway"

Bregman Construction Corp. quoted the sum of \$1,100,000 for the entire group set forth above, which included \$357,500 for sections 0010, 0112 and 0110. Consolidated Engineering Co. quoted separate prices which established its value of sections 0010, 0112 and 0110 at \$242,000. A decision was made by Flour City to carry \$700,000 for the balance of the work representing all of the above sections, excepting sections 0010, 0112 and 0110, and to carry \$300,000 for these latter sections.

Flour City further explained that the use of the phrase "FC-GEN Cond." in the amount of \$77,500 on its summary sheet introduced an element of confusion into its entire area of what is commonly interpreted to be "General Conditions." The sum of \$77,500 was carried to cover the following costs:

"Survey for curtain wall	\$ 5,000.00
Tools and parts trailer	5,000.00
Telephone	7,500.00
Miscellaneous field expenses	20,000.00
Removal and replacement of	
safety rails	5,000.00
As build record drawings	5,000.00
Off-Site storage	25,000.00
Vehicular parking	5,000.00
	<u>\$77,500.00 "</u>

Because of the confusion in terminology, the figure of \$300,000 covering the "General Conditions," "Supplemental Special Conditions" and "Special Conditions for All Contracts" was inadvertently omitted from its final summary. Flour City also submitted additional bid estimate documents which support its contention that it did in fact make a \$300,000 mistake in its bid.

An examination of the documentation submitted by Flour City showed that the \$300,000 amount in question appeared in its worksheets but had not been carried forward onto the Estimate Summary Sheet when computing the total bid price. Under these circumstances, it is apparent that Flour City intended to include this amount in its bid price. The contracting officer determined that the evidence submitted by Flour City clearly and convincingly establishes that Flour City made a mistake in the amount of \$300,000. In view of the manner in

B-188872

which the Estimate Summary Sheet was prepared by Flour City, that document demonstrates what the bid would have been but for the mistake. Therefore, Flour City was permitted to correct its total bid price to \$5,394,000.

From our examination of the data furnished in support of the alleged error, the mistake in bid procedures were strictly followed in this case so that the integrity of the competitive bidding system was not prejudiced and therefore the United States should have the cost benefit of the bid as corrected, provided that it is still lower than any other bid submitted. Since Flour City's bid as corrected was \$590,000 below the second low bid of \$5,984,000, bid correction was properly allowed.

For the reasons stated, Southern's protest is denied.

R. F. K. 114
Acting, Comptroller General
of the United States