

DECISION

24234
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-209218**DATE:** February 8, 1983**MATTER OF:** Halco Engineering, Inc.**DIGEST:**

When a bidder claims, or the bidder's conduct evidences, a mistake affecting its low bidder status, followed by an attempt to waive the claim and remain low by verification, the contracting officer properly may decline to accept the bid. A bidder cannot be permitted to decide after bid opening whether its bid, in fact, is the low bid.

Halco Engineering, Inc. protests the award of a contract by the Naval Facilities Engineering Command to John C. Grimberg Co. under invitation for bids No. N62477-81-B-7154 to install a dehydration facility at the Naval Ordnance Station, Indian Head, Maryland. Halco contends that, as the lowest acceptable bidder, it should have been awarded the contract. We deny the protest.

Bids were opened on September 7, 1982, with Streeter Amet the low bidder at \$10,650, Halco the second low bidder at \$514,000, and Grimberg the third low bidder at \$543,000. Streeter Amet's bid was rejected because of exceptions taken to the specifications and the unreasonable amount bid, leaving Halco as the lowest acceptable bidder. Because the contracting officer suspected the possibility of an error in Halco's bid due to an inconsistency between Halco's price for item 2 (the installation of an Electric Material Lift) and the Government estimate for item 2 and the other bid prices received, verification from Halco was requested by letter dated September 8. The following day, a Halco representative advised the contracting officer that Halco had inadvertently omitted the cost of an electrical hoist in its bid calculation, resulting in the bid price being

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understated by \$20,000. In a letter to the contracting officer dated September 10, Halco confirmed that this mistake had been made, but stated:

"If we can correct the bid and be awarded the job at the higher price, we wish to do so. But it must be clearly understood that we do not refuse the job under any circumstances especially if correcting our bid would result in our bid being non-responsive forcing us to withdraw."

By letter dated September 16, Halco sent the contracting officer materials supporting its claim of error regarding the omission of the electrical hoist cost, including its bid calculation worksheet. The September 16 letter advised: "Again, we desire to accept the job at our offered price if the above requested adjustment cannot be made."

A pre-award conference was held on September 20. In the course of the pre-award conference, the contracting officer reviewed Halco's bid calculation worksheet and discovered that there was a substantial discrepancy between Halco's calculation of \$4,800 for painting and sandblasting and the Government estimate of \$39,650 for that portion of the project. At this point, according to a Government file memorandum of the same date:

"The contractor [Halco] stated that his estimate did not take into account sandblasting and repainting of the entire structure and he questioned whether this work was within the contract scope. Halco's attention was directed to the structural notes on NAVFAC Drawing No. 3,122,228 and also to contract specification Section 09910 where the work is called for.

". . . After realizing that an additional error had been made in the painting portion of the bid, the contractor stated that the only way he would be able to take the contract is if his bid was corrected by \$20,000 for Bid Item II [electrical hoist]."

Halco's decision to withdraw its bid if it could not be corrected is also reflected in a handwritten notation dated September 20 and signed by the president of Halco on the second page of Halco's September 16 letter to the contracting officer:

"If we are not awarded the added \$20,000 we wish to withdraw our bid without penalty. We will not participate in this project in any manner if we are not awarded this contract. We believe the Government should save the \$10,000 however by awarding to Halco at the increased price."

The contracting officer determined that, because there was evidence that two mistakes had been made in Halco's bid, but no evidence as to exactly what price Halco had intended, Halco's bid could not be corrected, but withdrawal could be permitted.

On the afternoon of September 20, Halco advised the contracting officer that it had reconsidered and decided not to withdraw its bid. According to Halco, its initial decision to withdraw was based on the "pressure" and "emotion" of being told by the contracting officer that it had made an error of approximately \$35,000 in calculating its painting and sandblasting costs. Halco contends that, after checking with its intended subcontractor, it discovered that it had not made an error in calculating its painting and sandblasting costs and that the Government's estimate was unrealistically high. Nevertheless, the contracting officer declined to allow Halco to revoke its bid withdrawal. The contract was awarded to Grimberg on September 22.

Halco contends that the contracting officer should have allowed it to retract the claim of error in its bid price for painting and sandblasting, revoke its bid withdrawal, and accept award of the contract. We do not agree.

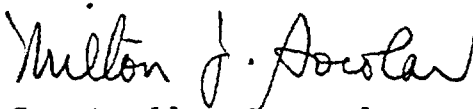
When a bidder claims, or the bidder's conduct evidences, a mistake affecting its low bidder status, followed by an attempt to waive the claim and remain low by verification, the contracting officer properly may decline to accept the bid. G. T. Murphy, Inc., B-204351, February 23, 1952, 32-1 CPD 161. The reason is that a bidder cannot be permitted to decide after

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bid opening whether its bid, in fact, is the low bid. Hanauer Machine Works, B-196369, March 6, 1980, 80-1 CPD 178; RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140.

In our view, the contracting officer acted reasonably in rejecting Halco's bid in light of the substantial disparity between the Government estimate for sandblasting and painting and Halco's quote, and Halco's initial reaction when that disparity was pointed out, despite Halco's subsequent contention that its sandblasting and painting costs as quoted were correct. Under the circumstances, there was substantial uncertainty as to whether Halco actually intended to bid a total of \$514,000 as entered plus \$20,000 for the omitted hoist, thus being low at \$534,000, or whether the firm intended an even higher bid that would reflect a mistake in pricing sandblasting and painting, as initially claimed; in the latter case, it is not clear that Halco's bid would have been lower than Grimberg's second low bid of \$543,000. In the face of that uncertainty, the contracting officer acted properly in refusing to award the contract to Halco. As indicated above, a bidder cannot be allowed to control its low bidder status after bid opening by claiming an error and later attempting to retract the claim.

The protest is denied.

for 
Comptroller General
of the United States