



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TLC Financial Group
File: B-237384
Date: January 26, 1990

DIGEST

1. Agency properly rejected bid where price was so low as to be clearly mistaken and protester failed to provide evidence that its bid would have been low absent mistake.
2. Contention that procurement was tainted based on protester's allegation that contracting officer improperly released to its competitor the name of the firm which had provided a funds commitment letter to the protester is denied where record indicates only that the contracting officer, in response to a request for the name of the protester's bond surety, inadvertently misidentified the company which had issued the commitment letter as protester's surety, and later provided the correct name.

DECISION

TLC Financial Group protests the rejection of its bid under invitation for bids (IFB) No. N62474-88-B-8227, issued by the Department of the Navy for maintenance and repair of military family housing and other Department of Defense (DOD) facilities in the San Francisco Bay area. The Navy rejected TLC's bid on the basis that the price for one item required by the IFB was so clearly mistaken that acceptance of the bid would have been unfair to TLC and to the other bidders. TLC asserts that it never alleged a mistake and that the Navy improperly provided confidential financial information to the awardee.

We deny the protest.

The IFB, issued by the Navy on May 19, 1989, contained three separate line items corresponding to a firm, fixed-price-lump-sum item (line item 0001) and two indefinite quantity items (line items 0002 and 0003). Five bids were received by bid opening on August 10, and TLC submitted the apparent low bid. TLC's bid of \$500,000 for line item 0001, however,

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was 68 percent below the government estimate (\$1,576,684) for line item 0001, and 64 percent below the second low bid for that item (\$1,390,161.96). Alerted to the possibility of a mistake in TLC's bid, the contracting officer initiated bid verification procedures to determine whether TLC could support its bid.

The Navy met with TLC officials on September 6, to verify whether TLC's bid on line item 0001 was based on a full understanding of the scope of work and to review work sheets used by TLC to calculate its bid price. Despite several agency requests, TLC did not submit its bid work sheets, providing, instead, a schedule of deductions prepared after bid opening which contained no information on how TLC calculated its bid. However, based on information contained in TLC's bid and discussions at the meeting, the contracting officer determined that TLC had misinterpreted the scope of work required by the IFB, resulting in a bid substantially below the government estimate and all other responsive bids.

For example, section C.6.a of the IFB required the contractor to provide and install various replacement appliances. According to the Navy, TLC admitted that it interpreted the IFB to require only transporting and installing government-owned appliances. In its schedule of deductions, under the heading "Appliance Replacement," corresponding to section C.6.a of the IFB, TLC listed the unit prices for dishwashers, ranges, and refrigerators as \$25, \$30, and \$20, respectively, for a total of \$11,760. The government estimate for replacing these appliances listed dishwashers at \$400, ranges at \$450, and refrigerators at \$600. A comparison with the government estimate (\$230,850) shows that this misinterpretation alone resulted in a \$219,090 mistake in TLC's bid. Realizing the mistake, TLC adjusted its schedule of deductions by increasing the prices for appliances and decreasing its prices for other work.

The contracting officer concluded that TLC's bid was clearly a mistake and determined that award to TLC would be unreasonable and unfair to the other bidders under Federal Acquisition Regulation (FAR) § 14.406-3(g)(5). By letter dated October 6, the Navy rejected TLC's bid and, on October 10, awarded the contract to Four Star Maintenance, the second low responsive responsible bidder.^{1/}

^{1/} The Navy determined that proceeding with performance of the contract was in the best interest of the government in accordance with FAR §§ 33.104(c) and (d), notwithstanding the protest filed at our Office.

As a preliminary matter TLC contends that, contrary to the Navy's representation, it never admitted that it had made a mistake in its bid and that without such an admission there is no basis to conclude that its bid is mistaken and should be rejected. We disagree.

FAR § 14.406-3(g)(5) provides in pertinent part as follows:

"Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders."

In similar cases where there has been some claim or conduct by the bidder indicating that a mistake had been made, followed by an attempt by the bidder to waive any claim of mistake in order to remain the low bidder, we have held that the government could not accept an obviously erroneous bid, even if verified by the bidder. See Duro Paper Bag Mfg. Co., 65 Comp. Gen. 186 (1986), 86-1 CPD ¶ 6; Alaska Mechanical, Inc., B-235252, Aug. 14, 1989, 89-2 CPD ¶ 137. Accordingly, whether TLC admitted in its meetings with the Navy that it had made a mistake in its bid is not dispositive of whether its bid was properly rejected as mistaken.

As noted above, TLC's price for line item 0001 was significantly lower than the government estimate and the other bids received. We believe the disparity in prices was sufficient to put the contracting officer on notice of a possible mistake and to request that TLC verify its bid. Despite the Navy's request, TLC failed to furnish any documentation supporting its bid calculations, such as its original work sheets. In fact TLC, to date, has provided no such documentation. The only information submitted was the schedule of deductions for the fixed priced work which was not required to be submitted with the bid and was prepared after bid opening. Rather than supporting TLC's contention that its bid was not mistaken, that schedule, with grossly underestimated prices for the required work, supports the Navy's statement that TLC's low price for line item 0001 reflected a misinterpretation of the requirements for

providing and installing various equipment. In view of the disparity between TLC's price, the government estimate and the other bids, and TLC's failure to substantiate its bid calculations when so requested, we find that the contracting officer reasonably rejected the bid as mistaken. See Veterans Administration-Advance Decision, B-225815.2, Oct. 15, 1987, 87-2 CPD ¶ 362.

Finally, TLC alleges that the agency acted in bad faith by improperly providing Four Star with confidential financial information about TLC. Specifically, TLC argues that the procurement was tainted when the contracting officer provided Four Star the name of a company which had issued a financial commitment letter to TLC as well as a copy of the letter. The record, however, does not support TLC's allegations.

According to the Navy, in response to a Freedom of Information Act request from Four Star for the identity of TLC's sureties, the agency inadvertently misidentified TLC's surety as Commerce Funding Corporation (CFC). Since CFC did not appear on the Department of the Treasury's list of approved corporate sureties, and in fact does not provide bonds to government contractors, Four Star urged the Navy to reject TLC's bid for failure to provide the required bond. The Navy then correctly identified TLC's bonding company as Argonaut Insurance Company and furnished Four Star a copy of TLC's bid bond in the form of a letter of credit from Argonaut. Four Star then determined that Argonaut was in fact on the Treasury's list of approved bonding companies.

Contracting officers are presumed to act in good faith, and, in order to establish otherwise, there must be convincing proof that the agency had a malicious and specific intent to harm the protester. Golden Marine Co., Inc.-- Reconsideration, B-228398.2, Apr. 18, 1988, 88-1 CPD ¶ 372. Here, TLC has not demonstrated that the contracting officer acted in bad faith by initially misidentifying the name of the bonding company or by later providing the correct name to Four Star. Moreover, the record does not reveal that the contracting officer released any commercial or financial information about TLC to Four Star. Accordingly, there is no basis to conclude that the procurement was tainted in any way as suggested by TLC.

The protest is denied.

for Andrew T. Pozany
James F. Hinchman
General Counsel