



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William G. Tadlock Construction

File: B-252580

Date: June 29, 1993

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Marcia Jane Bachman, Esq., and Martin C. O'Brien, Esq.,
Department of the Air Force, for the agency.
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of the decision.

DIGEST

1. Agency properly rejected as nonresponsive lump-sum bid for renovating military family housing units that contained unit prices that exceeded the statutory price limitation set forth in the solicitation for some housing units.
2. In the absence of evidence of a mistake in allocating unit prices, bid for renovating military family housing units may not be corrected to reallocate prices so as to make nonresponsive bid compliant with solicitation's statutory price limitation, even where the total bid price would not change on reallocation; protester's contention that it would not have intentionally submitted a nonresponsive bid, but for a mistake, is not sufficient to permit a reallocation of bid prices under mistake in bid procedures.

DECISION

William G. Tadlock Construction protests the rejection of its bid as nonresponsive and the proposed award of a contract to Selco, Inc., under invitation for bids (IFB) No. F04700-92-B0033, issued by the Department of the Air Force to renovate 48 single family housing units at Edwards Air Force Base, California. The agency rejected Tadlock's bid because it exceeded the statutory price limitation announced in the IFB for several housing units.

We deny the protest.

The IFB, issued October 5, 1992, called for the work to be performed in three phases (I, II, and III) consisting of about 16 units each, contract line item numbers (CLIN) 0001, 0003, and 0005. Bidders were required to submit a firm, fixed-price for each of the 48 housing units to be renovated. The IFB also required bidders to submit separate unit prices for the removal of vinyl asbestos floor tile and stucco siding from each housing unit, for each of the three phases, CLINs 0002, 0004, 0006. Bidders were also required to submit lump-sum prices for each CLIN and a total price for all CLINs. Section L of the IFB advised that all of the work called for in the solicitation combined was subject to a price limitation of \$63,000 per housing unit.

The agency received 11 bids by the January 22, 1993, extended bid opening date ranging from \$2,662,115 to \$3,695,906; Tadlock submitted the low bid. Upon examining Tadlock's bid documents, however, the contracting officer found that Tadlock's bid exceeded the price limitation on several units. For example, for a 4-bedroom unit to be renovated during phase I, Tadlock bid a unit price of \$65,627 for the work under CLIN 0001, and \$3,319 under CLIN 0002, for a total of \$68,946. Similarly, for a 5-bedroom unit included in phase I, Tadlock bid a unit price of \$82,034 under CLIN 0001, and \$4,148 under CLIN 0002, for a total of \$86,182.¹ In a letter dated January 25, citing the unit price limitation set forth in the IFB, the contracting officer rejected Tadlock's bid as nonresponsive. This protest to our Office followed an agency-level protest which the contracting officer denied.

The general rule with respect to statutory cost limitations is contained in Federal Acquisition Regulation § 36.205, 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. See Ward Constr. Co., B-240064, July 30, 1990, 90-2 CPD ¶ 87. When a bidder offers a unit price in excess of the statutory cost limitation on a housing project, it risks that its bid will be rejected as nonresponsive if no waiver to the limitation is requested or obtained. See Bill Strong Enters., Inc., B-222492.2, Aug. 11, 1986, 86-2 CPD ¶ 173. Here, it is undisputed that Tadlock submitted unit prices for several housing units that exceeded the price limitation set forth

¹Under phase II, for a unit identified in the schedule as a "Triplex Unit," plan 5C, Tadlock bid \$92,860 under CLIN 0003, and \$3,989 under CLIN 0004 for that unit, for a total of \$96,849. Under phase III, Tadlock submitted a unit price of \$79,154 for two units under that CLIN, and a price of \$98,942 for a third unit.

in the IFB, and the agency did not obtain a waiver to the limitation. The agency thus properly rejected Tadlock's bid as nonresponsive. Id.

The protester contends that its bid should not have been rejected as nonresponsive because its average price per unit is within the statutory cost limitation.² The protester explains that since Tadlock's suppliers and subcontractors submitted their prices on a lump-sum basis per CLIN, rather than per housing unit, Tadlock calculated unit prices by dividing its total price for each CLIN by the total number of bedrooms under that CLIN, to arrive at a price per room, then multiplied the resulting figure by the number of bedrooms in each housing unit to arrive at each unit price.³ The protester thus maintains that its unit prices are essentially arbitrary figures that do not represent actual prices, and that its average unit price is within the statutory price limitation. The protester also argues that had it been aware of the contracting officer's interpretation of the IFB's cost limitation provision (i.e., that no unit price could exceed \$63,000), Tadlock would have prepared its bid differently.

The protester's contention that in determining whether Tadlock's bid complied with the IFB's price limitation, the contracting officer should have divided Tadlock's total price by the total number of housing units to arrive at an average price, is not what the IFB contemplated. Section L of the IFB specifically stated that the price limitation for CLINs 0001 through 0006 was "\$63,000 per housing unit." The IFB further explained that the "[price] limitation for CLINs 0001 and 0002 COMBINED, 0003 and 0004 COMBINED, and 0005 and 0006 COMBINED, is \$63,000 per housing unit." [Emphasis in original.] The IFB thus clearly placed bidders on notice of the "per housing unit" price limitation. Further, rather than simply requesting total lump-sum prices, bidders were required to submit their prices broken down by unit prices for each of the 48 housing units to be renovated. This requirement was clearly intended to permit the agency to ascertain whether bids complied with the IFB's per housing unit price limitation. When the solicitation's

²Tadlock's total lump-sum bid price of \$2,662,115, divided by the 48 housing units covered under the IFB equals an average price of \$55,460 per unit.

³For example, the total price Tadlock bid for CLIN 0001, \$771,123, divided by 47 bedrooms under that CLIN equals \$16,407. Thus, a 2-bedroom unit was priced at twice that amount or \$32,814; a 3-bedroom unit was priced at \$49,221; a 4-bedroom unit was priced at \$65,627; and a 5-bedroom unit was priced at \$82,035.

price limitation provision is read in conjunction with the bid schedule, the only reasonable interpretation is that rather than calculating average unit prices, the IFB contemplated that no acceptable bid would contain unit prices that exceeded the statutory price limitation. Tadlock's explanation of the method it used to derive its unit prices notwithstanding, by submitting per housing unit prices that exceeded the IFB's price limitation provision, Tadlock risked that its bid would be rejected.⁴

Tadlock maintains that it should be allowed to reallocate its unit prices under mistake in bid procedures. The protester's bid, however, did not exceed the statutory price limitations as a result of a mistake. Rather, the record shows that Tadlock's bid contained unit prices that exceeded the IFB's price limitation because Tadlock either misunderstood or ignored the solicitation's price limitation provision. The mere fact that Tadlock may have misinterpreted how the IFB's price limitation would be applied does not compel a conclusion that it should now be allowed to "correct" its bid under mistake in bid procedures by reallocating its bid so as to eliminate the excessive unit prices.

As we explained in our decision in Bill Strong Enters., Inc., supra (bidder's request to correct its bid by reallocating its prices so as to comply with the statutory price limitation was properly denied), the mistake in bid procedures are limited to situations where the bidder claiming a mistake offers clear and convincing evidence of a mistaken price allocation, and the actual bid intended is ascertainable. Rather than reflecting a mistake, the protester's bid shows that Tadlock deliberately allocated prices according to a predetermined formula, which Tadlock based on an incorrect premise. Correction of a mistake in bid is not permitted where the alleged mistake is based on an incorrect assumption which a bidder discovers after bid opening. See Oregon Elec. Constr., Inc., 68 Comp. Gen. 110 (1988), 88-2 CPD ¶ 512. To allow bidders to cure a nonresponsive bid merely on the basis of general, unsubstantiated allegations of inadvertent error would impermissibly permit a bidder to

⁴Tadlock also argues that the IFB was ambiguous as to the applicability of the price limitation, and that it was defective because certain terms such as "housing unit" were vague or misleading. Any objections Tadlock may have had to the applicability of the IFB's price limitation or to any of the terms of the IFB should have been raised either with the agency or our Office prior to bid opening. See 4 C.F.R. § 21.2(a)(1) (1993). Since Tadlock did not file its protests until well after bid opening, its allegation that the IFB was defective is untimely and will not be considered.

recalculate its bid to arrive at a bid never intended before bid opening. Id. Here, the protester simply has not shown that its bid price allocation was the result of a mistake or that its unit prices were not what it intended to bid. Tadlock's bid thus could not have properly been made compliant with the IFB's price limitation provision under mistake in bid procedures, and was properly rejected as nonresponsive.

Tadlock maintains that Selco's bid is unbalanced and that, therefore, the proposed award to the firm is improper. Tadlock also contends that the government's estimate for the project may have been defective. The protester also argues that the government's estimator averaged prices over the 48 housing units to arrive at the Air Force's unit price estimates for the project. According to Tadlock, that method of arriving at its unit price estimate is inconsistent with the agency's position in this protest regarding the interpretation of the statutory price limitation.

Since its own bid was properly rejected as nonresponsive, Tadlock is not an "interested party" under our Bid Protest Regulations to challenge the proposed award to Selco since the protester would not be in line for award even if its protest were sustained. See 4 C.F.R. § 21.0(a); Cole Compressor, Inc.--Recon., B-241439.2, Nov. 28, 1990, 90-2 CPD ¶ 441. As for Tadlock's argument that the government estimate for the project may have been defective, and that the method used by the Air Force to arrive at its unit price estimates is inconsistent with the agency's interpretation of the IFB's price limitation, the government's estimate and its method for deriving estimated per housing unit prices have no bearing on how bidders prepared their bids or on what we find to be the reasonable meaning of the IFB price limitation.

The protest is denied.


 James F. Hinchman
 General Counsel