

Jordan



Comptroller General
of the United States

105476

Washington, D.C. 20548

Decision

Matter of: R.P. Richards Construction Company

File: B-260543

Date: June 21, 1995

C. Patrick Stoll, Esq., Herrig & Vogt, for the protester.
Thomas S. Luedtke, National Aeronautics and Space
Administration, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency decision to reject bid due to suspected mistake was reasonable where bid was significantly lower than the other responsive bids and the government estimate, and despite the agency's request to do so, the bidder failed to submit any documentation or explanation to support its bid.

DECISION

R.P. Richards Construction Company, a division of R.P. Richards, Inc. protests the rejection as mistaken of its bid under invitation for bids (IFB) No. 2-36230, issued by the National Aeronautics and Space Administration (NASA), for seismic repair of a building at the Dryden Flight Research Center. Richards contends that the agency should have accepted its low bid as submitted.

We deny the protest.

The Dryden Center is located in an earthquake zone in Edwards, California. The IFB, issued December 16, 1994, contemplated award of a fixed-price contract for an eight phase construction effort at Dryden's Administrative Headquarters building, which houses two aircraft hangars, the aircraft operations center, and other Center administrative functions. The construction included strengthening existing unreinforced concrete walls by adding new reinforced walls, bracing the original walls, in-filling between existing concrete panels, providing a structural tie between the main building and a 1977 addition, and installing seismic bracing and supports for ceilings,

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pipng, ducts, and equipment. The area above the ceilings is contaminated with asbestos which must be properly removed or otherwise abated prior to completion of other work. The building is to be partially occupied during the work, requiring temporary relocation of personnel as each area is completed. Prospective bidders, including Richards, attended a pre-bid conference and site walk-through in early January.

Thirteen bids were received by the February 7, 1995, bid opening date. The bids ranged from \$1.93 million to \$7.42 million. The low bid was rejected as nonresponsive because the bidder did not submit a completed certificate of procurement integrity.¹ Richards submitted the second low bid of \$4.078 million. Since this bid was out of line with the other responsive bids and the government estimate of \$6.85 million, the contracting officer sent a telefacsimile (fax) to Richards on February 7, requesting that it review its entire bid and verify it as to price and conditions. If the bid was correct as submitted, Richards was instructed to "verify it immediately in writing." In addition, Richards was asked to "provide a cost breakdown of material and labor by division as delineated in the plans and specifications." If Richards intended to allege a mistake, it was to "immediately notify" the contracting officer and submit the original work sheets showing the error alleged. The fax, which included a copy of the bid abstract, required Richards to respond no later than Friday, February 10.²

On February 10, representatives of Richards requested another walk-through of the building before deciding whether the firm needed to withdraw its bid. The agency escorted Richards's representatives through all areas requested by them. At the close of the walk-through, the representatives did not indicate what Richards's decision would be. Later that afternoon, the contracting officer spoke with Richards's treasurer, who had signed the original bid. The treasurer advised that they would be working on the bid all weekend and would know by Monday, February 13. On February 13, the contracting officer twice called Richards to speak with its treasurer, but was advised that the

¹The low bid also appeared to have included a mistake, which the agency did not resolve due to the rejection of the bid as nonresponsive.

²The protester denies that it ever received by fax, or regular mail, the second page which contained the deadline, the contracting officer's telephone number, and her signature. Since the agency did not hold the protester to this deadline, we need not determine whether the alleged nonreceipt prejudiced Richards.

treasurer was unavailable. The contracting officer finally spoke with the treasurer at 3 p.m. and was told that Richards "would know" by "late today." Richards neither contacted the contracting officer nor left a message on her phone mail service that day. On February 14, the contracting officer left three phone messages for the treasurer and one message on February 15. None of the phone calls was returned.

When Richards failed to respond, the contracting officer rejected Richards's bid based on its being so far out of line with the NASA estimate and the other bids, in conjunction with Richards's failure to provide evidence to substantiate its bid price. The contracting officer faxed the rejection notice to Richards on February 16. That same day, due to the urgency of the project and fluctuating funding, NASA awarded the contract to the next low bidder, Keeton Construction, for \$5.20 million. On February 17, NASA received two fax submissions from Richards. One, dated February 15, stated that Richards confirmed its original bid, but did not provide the cost breakdown requested by NASA. The other, dated February 17, expressed confusion over the rejection of its bid since it "faxed and mailed [its bid confirmation] on February 15." Mailed copies of both Richards submissions were postmarked February 17, and were received by NASA on February 21-22. On February 24, Richards filed this protest. On March 14, NASA determined that urgent and compelling circumstances justified its allowing Keeton to continue performance of the contract.

Richards contends that its bid was correct as submitted. Since its bid was not mistaken, and in the absence of any evidence of a mistake apart from the price differences, Richards asserts that the rejection of its bid was unreasonable.

Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid, denies the existence of a mistake, or seeks to waive an admitted mistake, unless it is clear that the bid as submitted and intended would remain low. Trataros Constr., Inc., B-254600, Jan. 4, 1994, 94-1 CPD ¶ 1; Atlantic Servs., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125. Federal Acquisition Regulation (FAR) § 14.406-3(g)(1) provides that a contracting officer shall immediately request a bidder whose bid contains a suspected mistake in bid to verify the bid and that the "[a]ction taken to verify bids must be

sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder." FAR § 14.406 3(g) (5) then provides:

"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."

A contracting officer's decision to reject an apparently mistaken bid under the authority of the above-quoted FAR provision is subject to question only where it is unreasonable. Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355; Gore's Sec. Agency, Inc., B-240969.2, Nov. 6, 1991, 91-2 CPD ¶ 430. Whether a bidder admits that it has made a mistake is not dispositive as to whether a bid may be rejected as mistaken. TLC Fin. Group, B-237384, Jan. 26, 1990, 90-1 CPD ¶ 116.

We conclude that the contracting officer's decision to reject Richards's bid was reasonable under FAR § 14.406-3(g) (5). As noted above, the agency believed Richards had made a mistake because its price was significantly out of line with the government estimate (68 percent) and with the other responsive bids (27.5 percent lower than Keeton's bid). Even though the protester was apprised of the agency's concerns, Richards did not furnish evidence to show that there was no mistake or to indicate how it had calculated its bid, despite the agency's request for a cost breakdown of material and labor by division. In fact, despite a second walk-through of the facility and numerous attempts by the agency to obtain either verification or a claim of mistake, Richards failed to verify its bid until after it received the agency's notice that the bid had been rejected. Even now, when the importance of such information should be plain to Richards, the protester has not furnished our Office with any evidence

to substantiate its bid prices. Under these circumstances, we conclude that the contracting officer reasonably rejected Richards's bid pursuant to FAR § 14.406-3(g)(5).

The protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel