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DECISION



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

FILE: B-187023

DATE: October 18, 1976

MATTER OF: Professional Electronics Co., Inc.

DIGEST:

Since rule that permits bid correction upon establishment of evidence of mistake and intended bid does not extend to permitting recalculation of bid on basis of factors not known when bid was submitted, request for contract modification due to mistake in bid alleged before award is denied because information in record did not clearly indicate what intended bid would have been and contractor (declining opportunity to withdraw bid) agreed to perform contract at price bid.

Pursuant to a mistake in bid alleged before award, Professional Electronics Co., Inc. (PEC), requests a \$2,845 increase in its contract awarded under invitation for bids (IFB) No. DAAD01-76-B-0033, by the Procurement Directorate, U. S. Army Yuma Proving Ground (Army), Arizona.

The IFB called for the procurement of a transmitter. The Government estimate for the unit was \$12,000. Three bids received at bid opening were \$2,890, \$10,651.56 and \$16,900, respectively, with PEC being low. Because of the disparity in price between PEC's bid and the next low bid and the Government estimate, PEC was notified of the possibility of a mistake in its bid.

By letter dated April 28, 1976, PEC alleged that a mistake in bid had occurred due to its failure to include in its bid the cost of an RF Exciter, which it had thought would be Government-furnished equipment (GFE). The error was said to have occurred when, in preparing its bid, pricing data was copied from a previous Government contract sheet for a similar unit in which the RF Exciter was

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GFE, PEC stated that when computed with the cost of the RF Exciter, its intended bid price would have been \$5,735. Notwithstanding the alleged error, PEC refused to withdraw its bid and stated it would perform the contract at the price bid if corrections were not allowed.

There was no indication in the solicitation that Government-furnished material would be provided. In view thereof, the contracting officer made a second request to PEC for more conclusive proof of its error and intended bid price. In its May 18, 1976, letter, PEC stated that validation of its price data supplied for the bid was:

"1. RF Amplifier with HV Power Supply	\$2890.00
"2. 90 Watt RF Exciter mounted with cabinet	\$2510.00
"3. Integration of System, Test, G & A and Profit	\$ 335.00
	<u>\$5735.00"</u>

The cost data for the 90-watt RF Exciter was verified by a supplier price quotation dated May 7, 1976.

The contracting officer noted that the requested correction would not change PEC's position as the lowest bidder. Moreover, the corrected bid would have still been over 50 percent lower than the Government estimate. Therefore, the contracting officer forwarded the matter to the approving authority with the recommendation that correction be allowed. The contracting officer was subsequently authorized to permit PEC to withdraw but not correct its bid or, in the alternative, to permit PEC to waive its alleged mistake and accept the contract at the bid price of \$2,890. On June 29, 1976, PEC was awarded the contract at the bid price with the condition that PEC reserved the right to appeal to our Office for a decision on whether the contract price could be modified.

Where a mistake in its bid is alleged after bid opening and before award, Armed Services Procurement Regulation (ASPR) § 2-406.3(a) (1975 ed.) states in subsections (1) and (2):

"(1) When the bidder requests permission to withdraw a bid and clear and convincing evidence establishes the existence of a mistake, a determination permitting the bidder to withdraw his bid may be made.

"(2) However, if the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal."

Although it was clear that a mistake had occurred, the record shows that the Army denied correction because the intended bid price had not been established to its satisfaction. In this connection, PEC indicated that it arrived at the bid price for this procurement by reducing its unit price of \$2,920, under a previous contract (for an RF 1-kw, Model 1-KW15) to \$2,890. No explanation was given for the \$30 reduction in price. Neither was it explained why the bid price of \$2,890 did not include the "Integration of System, Test, G&A and Profit" which was apparently first requested after bid opening in order to correct the alleged mistake in bid. With respect to the requested cost increase of \$2,510 for the RF Exciter, it was noted that PEC did not request correction as evidenced by its worksheets prepared prior to bid opening but on the basis of a supplier's quotation requested after the opening. The Army concluded that post-bid-opening information could not be used to determine an intended bid, and without the availability of prebid figures there was no evidence that the bid submitted was not the intended bid. Therefore, the Army determined that the evidence presented was not clear and convincing enough to permit correction.

Where a mistake in bid is alleged prior to award, it is the established position of our Office that to permit correction a bidder must submit clear and convincing evidence: (1) that an error has been made; (2) of the manner in which the error occurred; and (3) of the intended bid price. However, the rule which permits bid correction upon the establishment of evidence of mistake and the intended bid does not extend to permitting a bidder to recalculate and change its bid to include factors which the bidder did not have in mind when the bid was submitted. See 52 Comp. Gen. 400, 404 (1972).

Although evidence was presented in this case to show an error and how it occurred, there was no evidence to prove the intended bid

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price. We note, for example, that no bid preparation worksheets were provided to show how the bid had been computed. Our requests for the worksheets resulted in PEC's submission of a letter dated September 8, 1976, which indicated a price of \$3,580.48 for partial list of parts contained in a Model. 1KW14C Transmitter, which was more than the original bid and less than the requested correction. This figure was said to be exclusive of costs for labor, fabrication, testing, or other operations involved, and did not indicate whether it included the price of the RF Exciter. Based upon our review of the record, we concur with the Army's determination that no facts existed which would have permitted PEC to correct its bid. Therefore, PEC's election to accept award and not withdraw its bid resulted in a valid and binding contract, and the request for contract modification on the basis of its intended bid is denied.

Acting

[Handwritten Signature]
Comptroller General
of the United States