

DOCUMENT RESUME

03016 - [A2093185]

[Protest to Correction of Error in Proposal]. B-189038. July 26, 1977. 4 pp.

Decision re: Alector Graphics, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Braceland Brothers, Inc.; Federal Lithograph; Government Printing Office.

Authority: F.P.R. 1-2.406-3(d) (5). F.P.R. 1-2.406-3(a) (2).
F.P.R. 1-2.406-2. B-182485 (1975). B-164869 (1968). 53 Comp. Gen. 232.

Obvious misplaced decimal point in bidders' proposals was allowed correction by contracting officer which thereby displaced protester as low bidder. Error was type which could be corrected if contracting officer obtained verification of bid intended. Low bidder's refusal to furnish evidence of suspected mistake rendered its bid unacceptable. Protest was denied.
(Author/DJM)

P.L.I
Cherkins

DECISION



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

FILE: B-189038

DATE: July 26, 1977

MATTER OF: Alector, Inc.

DIGEST:

1. Protest of bidder who was displaced as low bidder after contracting officer permitted correction of other bids is denied since error consisted of obvious misplacement of decimal point, and error made is type which may be corrected by contracting officer prior to award if contracting officer has obtained bidder verification of bid actually intended.
2. Where all bids contained apparent misplaced decimal points in sub-item prices which were discovered after bid opening but prior to award and were caused by changes in requirements from prior year resulting in bids on sub-items being ten times greater than prior year, refusal by low bidder to furnish evidence of suspected mistake renders its bid unacceptable under FPR § 1-2.406-3(d)(5). Consequently, no reasonable basis exists to question determination to permit correction of other bids which were verified as to intended price.

Alector, Inc. (Alector), protests the decision by the Government Printing Office (GPO) to permit Braceland Brothers, Inc. (Braceland), and Federal Lithograph (Federal) to correct a mistake in their respective bids and the subsequent award to Braceland.

Program No. 203-5 was opened on April 18, 1977, with 3 bidders submitting bids. The bids were as follows:

Alector, Inc.	\$35,314.72
Braceland Brothers, Inc.	36,151.79
Federal Lithograph	36,840.10

Upon examination of the bids, the contracting officer discovered that the prices for sub-items (q) and (r) under item V were excessive. These sub-items were for drilling and punching of 100 leaves each run.

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An investigation revealed that the same services in last year's contract (May 1, 1976 - April 30, 1977) were priced on the basis of 1,000 leaves for punching and drilling. This change of 1,000 leaves for punching and drilling to 100 leaves was not highlighted on page 1 of the specifications as is normally done by GPO.

On April 22, 1977, all bidders were requested to verify their prices on sub-items V (q) and (r). Alector called back the same day and stated that its intent was to bid \$0.01 instead of \$0.10 on (q) and \$0.08 instead of \$0.80 on (r) and that a confirming letter would follow. Both Braceland and Federal agreed with the contracting officer that an error had been made in their bids. Braceland changed from \$0.38 to \$0.038 on sub-item (q) and from \$2.50 to \$0.25 on sub-item (r). Federal changed from \$0.15 to \$0.015 on sub-item (q) and \$2.75 to \$0.275 on sub-item (r).

By letter dated April 25, 1977, Alector stated that after reviewing its bid and in spite of its conversation with GPO on April 22, it was not changing its bid which was found to be without error by the protester.

The contracting officer permitted correction of the Braceland and Federal bids. Alector's bid remained unchanged since it disclaimed any error. The final bids were as follows:

Braceland Brothers, Inc.	\$26,887.97
Federal Lithograph	33,108.70
Alector, Inc.	35,314.72

Award was made to Braceland as low bidder on May 2, 1977.

By mailgram dated May 7, 1977, and received in our Office on May 9, 1977, Alector protested the award to Braceland. The thrust of Alector's protest is essentially that the contracting officer violated Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2) (1964 ed. circ. 1), which states:

"A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually

intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

GPO allowed Braceland and Federal to correct their mistakes under the authority of FPR § 1-2.406-2 (1964 ed. circ. 1) which provides:

"Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are: obvious misplacement of a decimal point; obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and obvious mistake in designation of unit. Correction shall be reflected in the award document."

We have previously held that FPR § 1-2.406-2 requires that the mistake be apparent on the face of the bid and that the contracting officer be able to ascertain the intended bid without benefit of assistance from the bidder. Sundance Construction, Inc., B-182435, February 28, 1975, 75-1 CPD 123. We agree with GPO that the errors that occurred were clerical in nature. See B-164869, August 6, 1968, where under similar circumstances misplaced decimal points were struck and bidders were allowed to correct their bids. The authority to correct mistakes alleged after bid opening but prior to award is vested in the contracting agency. Although our Office retains the right to review administrative determinations, GAO will not question a factual determination permitting correction unless there is no reasonable basis for such determination. 53 Comp. Gen. 232 (1973).

We have no legal objection to the actions taken by the contracting officer in allowing Braceland and Federal to correct their bids. All three bidders bid in the same fashion for sub-items (q) and (r), and made the same type of mistake. This is evidenced by the correction made by two of the bidders and Alector's phone conversation with the contracting officer on April 22, even though Alector chose not to correct its bid and disclaimed any mistake whatsoever. We agree that the contracting officer was entitled to make the corrections after having the bidders verify what their intended bid prices would have been but for the mistake.

It is also our view that Alector would not be entitled to award even though it disclaimed any error in its bid. Acceptance of the bid would conflict with FPR § 1-2.406-3(d)(5) (1964 ed. circ. 1) which provides that:


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"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 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 there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, in which case it may be rejected. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented."

Since there are clear indications that an error was made in Alector's bid, to accept its bid would be prejudicial to the other bidders.

While counsel for Alector cites authority for not allowing correction of the Braceland and Federal bids under FPR § 1-2.406-3(a)(2), since we agree with GPO that the errors were clerical in nature and are correctable under FPR § 1-2.406-2, those decisions cited are not for application in the instant circumstances.

In view of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States