

11401

DECISION



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

[Protest of Navy Allowing Competitor to Correct Bid Mistake]

FILE: B-193952

DATE: September 14, 1979

MATTER OF: Kings Point Mfg. Co., Inc.

CG 01100

DIGEST:

1. Notwithstanding procuring agency's decision not to release to protester certain documents (worksheets) low bidder submitted in support of mistake correction, propriety of agency's allowance of correction will be reviewed.
2. Agency determination permitting correction of mistake in low bid is proper where record indicates that agency reasonably determined that low bidder's worksheets presented clear and convincing evidence of mistake, which consisted of decimal point error in price of materials (\$7.16 rather than \$71.585) and, when corrected and recalculated, intended bid. Conclusion is not affected by failure of worksheets to specifically indicate that relatively small shipping costs were not included in worksheet's total cost of materials.

*CG 01332
AG 000206*

Kings Point Mfg. Co., Inc. (Kings Point), protests the Navy's proposed decision to permit Pioneer Recovery Systems, Inc. (Pioneer), to correct a mistake in bid alleged after opening but prior to award under invitation for bids (IFB) No. N60921-79-B-A004, issued by the Naval Surface Weapons Center (NSWC), Dahlgren, Virginia. The contracting officer determined that Pioneer's bid was correctable pursuant to Defense Acquisition Regulation (DAR) § 2-406.3(a)(2) (1976 ed.) and recommended that the protest be denied.

~~006975~~

The subject IFB called for MK-12 Surface Supported Diving System Harnesses and associated items. Five bids were received, which ranged from Pioneer's low bid, with a unit price of \$29.23 for items 0001AA and 0001AB (one first article and 160 production units, respectively) and a total amount of \$15,240.57, to a high bid of \$62,618.22. The second low bid was submitted by Kings Point with a unit price for items 0001AA and 0001AB of \$134 and a total price of \$33,400.20.

The Navy reports that upon examination of the bids received, it suspected that a mistake may have been made in Pioneer's bid in view of the prices received and requested verification. Pioneer claimed that its bid contained an error in price for items 0001AA and 0001AB and requested that the contracting officer permit correction. Pioneer submitted worksheets and a notarized statement which indicated that the worksheets were the original documents prepared prior to bid opening, were used in the preparation of the bid, and were not altered. Pioneer stated that the cost of the materials was incorrectly entered onto the quote sheet from the bill of materials. Because of this, Pioneer entered its material cost as \$7.16 instead of \$71.59. Pioneer stated that its quotations for the associated items 0002 through 0011 were correct as submitted. The contracting officer determined that Pioneer's worksheets and other data were clear and convincing evidence of the existence of a mistake and the actual bid intended due to a misplaced decimal point. The bid as corrected would result in a total bid of \$28,019.14 which would not displace the bid of the next low bidder, Kings Point, at \$33,400.20.

Kings Point protests any correction of Pioneer's bid stating that Pioneer has not submitted clear and convincing evidence of a mistake and the intended bid price. Kings Point also objects to the refusal of the procuring activity or Pioneer to release to it the evidence (worksheets) Pioneer

submitted to support its claim of mistake. The Navy determined that certain data relating to Pioneer's labor, overhead, G&A, and profit were the firm's confidential business data which, if furnished to Kings Point, would materially harm Pioneer's competitive position with respect to future acquisitions.

Whether Pioneer's documents are required to be released to Kings Point is a matter for the Navy, not GAO, to resolve. Nevertheless, it is our practice to decide the merits of a bid protest against a bid correction even though the protester has not been given access to the worksheets upon which allowance of the correction was based. See Truland Corporation, B-193152, April 11, 1979, 79-1 CPD 254; RCI Microfilm, B-182169, April 10, 1975, 75-1 CPD 220.

The Pioneer worksheets for items 0001AA and 0001AB include (1) a quote sheet, (2) summary bill of materials listing the five components of the end item and respective prices (We note here that the Navy inadvertently sent this to Kings Point.), and (3) breakdown sheets of the five components into their respective cost elements. Below the summary bill of materials price of \$71.585 is a separate entry "FOB Dahlgren, Va. 22448 * * * .922."

Kings Point asserts that the above cost entry of \$0.922 is not included in the summary bill of materials total cost and does not appear to be included elsewhere. Therefore, Kings Point contends that the evidence Pioneer submitted does not unequivocally show what it intended to bid. We agree that Pioneer's workpapers do not specifically indicate that the freight charge is included in Pioneer's costs. Pioneer states that its freight charges are on all estimates as a memorandum of anticipated shipping costs and that its accounting system accounts for freight as part of its overhead structure. Kings Point believes this explanation "defies validity" under standard accounting practice. While there is no specific inclusion of

the costs in the workpapers, Pioneer's position is supported by the absence on the quote sheet of the freight charge despite the sheet's providing a line item for entry of an "FOB Destination" charge. In any event, this uncertainty alone would not be inconsistent with clear and convincing evidence of an intended bid in view of the relatively small amount (approximately \$160) involved when compared to the difference between the bid as corrected and Kings Point's bid (almost \$5,400). See Fortec Constructors, B-189949, November 15, 1977, 77-2 CPD 372.

Kings Point further contends that Pioneer's prices for associated items 0002 through 0011 which closely relate to the main end item may not have been calculated on the same basis as the main end item and, therefore, takes the position that if this is true, Pioneer has not submitted compelling evidence to allow correction. The acceptance by the Navy of Pioneer's blanket statement as to the correctness of these prices was improper because of the Navy's "clear cut responsibility to test the buildup for the Pioneer price in order to assure the correctness of it." Kings Point focuses on Pioneer's material cost of \$10.367 for the "rear jocking strap," one of the five components of the end item. Kings Point computes its material cost for this component to be \$6.394 except for black chrome plating which would not substantially change that cost. The protester points to the inconsistency of its cost figure and Pioneer's material cost alone of \$10.367, further compounded by Pioneer's \$13.45 bid price for the identical associated item (No. 0008).

In rebuttal, Pioneer believes that Kings Point has grossly understated the plating cost and provides a quotation to support its position. We observe that Pioneer's associated item 0008 bid price for this strap is in line with Kings Point's price of \$14.96. Further, the Pioneer price for the strap was adjusted to reflect appropriate other factors such as labor, overhead, G&A and profit, in a manner

consistent with all other materials costs. In this respect, the adjusted cost for the strap is consistent with the application of those factors. We have no evidence that the \$10.367 figure was, as Kings Point implies, "plugged" to render valid the misplaced decimal theory. Therefore, we do not find any detraction from the standard for allowing correction in this regard. Kings Point's reference to our decision, F. Hodgson & Sons, B-193531, May 16, 1979, 79-1 CPD 357, does not support its position since, there, correction of an error on one item, unlike here, cast doubt on the intended bid of another item.

Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency. The weight to be given to the evidence in support of an alleged mistake is a question of fact to be decided by the procuring agency whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. John Amentas Decorators, Inc. B-190691, April 17, 1978, 78-1 CPD 294; 53 Comp. Gen. 232, 235 (1973).

The Navy's determination that the error was due to a misplaced decimal point and that Pioneer's worksheets firmly established the validity of its mistake and the intended price is confirmed by our review. The breakdown sheet totals for the individual components are carried forward exactly to the summary bill of materials as \$71.585. In contrast, the quote sheet reflects a materials cost of \$7.16. An intended bid price of \$108.60 per unit results from the application of the identical other factors as were used in the erroneously computed bid. Based on our review of the record, we cannot question the procuring activity's decision to permit Pioneer to correct its bid in view of the evidence submitted by the firm, the fact of Kings Point to show any basis for not allowing correction, and the fact that Pioneer's bid as corrected remains low.

B-193952

6

Accordingly, the protest is denied.

R. F. Kellm

Deputy Comptroller General
of the United States