

DECISION



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

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FILE: B-183432

DATE: June 10, 1975

MATTER OF: Hygrade Food Products Corporation

DIGEST:

1. Contractor's request for modification due to alleged error in bid price caused during transmission of telegraphic bid cannot be allowed where record shows bid was transmitted by personnel and equipment under contractor's control; neither does record provide clear and convincing evidence how mistake occurred or that price received by Government was not bid intended prior to award.
2. Where contractor submitted two prices in telegraphic bid under invitation to supply beef, contracting officer was not on constructive notice of possible error in bid since invitation allowed bidders to submit different prices in the same bid and there was not wide disparity of prices among lowest bids received.

The United States Department of Agriculture (USDA) has requested our decision regarding an error Hygrade Food Products Corporation (Hygrade) alleges was made in its bid to supply 192,500 pounds of frozen ground beef under Invitation LS-65 for Offers, issued by the Agricultural Marketing Service, Washington, D. C.

The invitation provided for bids to be submitted by mail, hand delivery, or telegram. Hygrade's bid, which was transmitted by Western Union, arrived prior to the February 3, 1975, closing time (4:00 p.m.) for receipt of bids. After it was awarded contract No. 12-25-5-3507 on February 5, 1975, Hygrade advised USDA that the notification of award erroneously indicated acceptance at a bid price of 54.38 cents per pound. Since its low bid was alleged to have been submitted at 58.38 cents per pound, Hygrade requested cancellation of its bid because of the mistake. Since the contract has been fully performed, its request must necessarily be treated as one for contract modification.

By letter dated February 12, 1975, Hygrade sent USDA a purported copy of its bid as transmitted by Western Union on February 3, 1975,

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for 10 cars at 38,500 pounds each out of Tacoma, Washington. The copy indicated the bid to be:

"5 CARS, 38,500 POUNDS EACH AT 58.38

5 CARS, 38,500 POUNDS EACH AT 58.98."

However, the bid received at USDA read, in pertinent part, as follows:

"5 CARS, 38,500 POUNDS EACH AT 54.38

&5 CARS, 38,500 POUNDS EACH AT 58.98."

Hygrade contends that the error of transmission was due to an error of the telegraphic equipment.

Regarding the error in transmission, USDA's report noted that Hygrade's employees operate teletype equipment leased from Western Union. Under these conditions, Hygrade's operator first cuts a tape, and this tape is used to send the actual transmission on the Western Union lines to USDA's leased wire office. In arriving at the conclusion that Hygrade did not present clear and convincing evidence to substantiate the mistake, the report stated that:

"The copy of the offer wire submitted by the contractor shows 58.38 in the first line entry under item (4) of the offer format, whereas the message we received read 54.38. Further, the second line commenced with the figure 5, while that received by the Department started with '&5.' A discussion with those in charge of the leased wire operations in this Department as well as a Western Union representative did not provide a satisfactory explanation of the differences. The consensus was that while a momentary power outage could perhaps alter a figure from 8 to 4, the odds of this happening were very remote. They also considered it strange that an ampersand would have been added to the second line item when no such character was part of the alleged original message. They also expressed the view that appropriate adjustments could have been made in the sending tape by employees of the contractor so that the message produced from the altered tape would now agree with the contractor's contention."

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Where a mistake in bid is alleged after award, Federal Procurement Regulations (FPR) § 1-2.406-4 (1974 ed.) provides that corrective action may be taken if there is:

"* * * clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the contractor was so apparent as to have charged the contracting officer with notice of the probability of the mistake."

In this instance, Hygrade has not presented a clear and convincing explanation of either how the error occurred, or the discrepancies between the bid received and the alleged copy of the original bid sent. Where an error of transmission is alleged in a telegraphic bid sent by equipment, personnel, or facilities under the control of the interested bidder, the record must clearly establish that the error occurred after the bid was actually transmitted or in the process of its receipt by the Government. Cf. 49 Comp. Gen. 417 (1970). Hygrade elected to submit a telegraphic bid, and on the basis of the evidence in the record we must conclude that it bears the responsibility for the accuracy of its bid as received.

Nevertheless, our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid. Valley Offset, Inc., B-181620, August 27, 1974. USDA contends that it did not suspect an error in bid because the three lowest bids (in cents per pound) were received at 54.38 (192,500 lbs. - Tacoma, Wash.); 55.90 (115,500 lbs. - Denver, Colo.); and 57.99 (3,850,000 lbs. - Green Bay, Wis.). Thus Hygrade's low bid was not verified for accuracy since it was 1.52 cents less than the second low bid, and this was less than the difference of 2.09 cents between the second and third low bids. Furthermore, USDA felt verification was unnecessary "since all offer[ed] prices had been dropping sharply in the three previous weekly submissions * * *."

The invitation's abstract of bids reveals that prices submitted by bidders ranged from 54.38 to 69.99 cents per pound for different quantities of beef. Prices were apparently bid in relationship to the quantity available at specified shipping points throughout the nation. When this difference in shipping locations is taken into consideration, there does not appear to be a sufficient disparity in

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the low bids to constitute notice of the possibility of an error which would require verification.

Finally, the solicitation permitted bidders to offer different prices for varying quantities available from the same shipping point. Significantly, under this same invitation, Hygrade submitted bids respectively of 58.38 and 58.98 for two quantities at 385,000 lbs. each, at Spokane, Washington. Therefore, we do not believe that the receipt of Hygrade's telegraphic bid (supra), with different prices for shipment from Tacoma, Washington, placed the contracting officer on notice of the possibility of an error in bid.

Accordingly, the request for contract modification is denied.


Acting Comptroller General .
of the United States