



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

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September 28, 1973

CN6005

DC Electronics, Incorporated
544 North Highland
Aurora, Illinois 60506

Attention: Mr. Donald J. Barrett
President

Gentlemen:

ACC 0009

Reference is made to your letter of July 10, 1973, and subsequent correspondence, protesting the award of a contract to any other bidder pursuant to Invitation for Bids (IFB) No. DEA-409-73-B-1164, issued May 31, 1973, by the Defense General Supply Center of the Defense Supply Agency (DSA), Richmond, Virginia.

Briefly stated, you allege that your failure to bid a price for item 3 of the invitation was an obvious mistake which should be corrected. For reasons hereinafter stated, we must conclude it would be improper to permit you to insert a price for item 3 after bid opening.

The IFB in question was issued to procure a definite quantity of Clearance Marker Lights. The schedule listed three separate items: item 1 solicited bids for 155 lights, to be delivered to Oakland, California; item 2 covered 3974 lights, to be delivered to Tracy, California; and item 3 was for 8507 lights, to be delivered to Richmond, Virginia. All items were to be shipped and delivered f.o.b. destination. The invitation did not require bidders to bid on all items.

On June 21, 1973, three bids were received and opened. Spectron, Incorporated, bid \$1.73 for each item, and the Aurora Cord & Cable Company bid \$1.49 for each item. Your company bid \$1.31 for items 1 and 2, but failed to submit any bid for item 3.

On June 26, 1973, you notified DSA by telegram that DC's failure to bid on item 3 was a clerical error, and that you wished to correct the bid by inserting a price of \$1.31 per unit for item 3. An evidence of the alleged error you submitted a retained copy of the invitation on which a unit price of \$1.31 appeared for item 3. You also contend

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that your intention to bid on item 3 is evidenced by your offer to decrease your bid price for "ALL" items if the Government were to waive the requirement for first article approval testing. This offer appeared in the bid which you submitted, as follows:

"Oh, WAIVER OF FIRST ARTICLE APPROVAL TESTS
(Decrease in Price)

* * * * *				
Decrease in Price			Unit Price Decreased	
Item No.	By		From	To
ALL	.15 each		\$1.31	\$1.16"

Therefore, you argue that correction should be permitted pursuant to Armed Services Procurement Regulation (ASPR) 2-406.3(a)(2) and (3) which authorizes bid correction where there is clear and convincing evidence of the existence of a mistake and the bid actually intended, provided no lower bidder is displaced by virtue of the correction unless the required evidence is ascertainable substantially from the invitation and bid itself. Further, it is your position that a price for item 3 may now be inserted since a modification of a bid which makes the terms of an otherwise successful bid more favorable to the Government may be considered at any time it is received.

We have held that a bid which fails to include a price for an item generally may not be corrected after bid opening to permit the bidder to insert such a price. See 52 Comp. Gen. _____ (B-177368, March 23, 1973), where we stated as follows:

"To promulgate a rule which would allow bidders to correct a price omission after an allegation of mistake in bid would generally grant the bidder an option to explain after opening whether his intent was to perform the work for which the prices were originally omitted. B-176254, September 1, 1972. To extend this option would in effect be tantamount to granting the opportunity to submit a new bid. B-166778, July 9, 1959; B-161628, July 20, 1967; B-150168, November 13, 1962. We have therefore held that an allegation of error is proper for consideration only where the bid is responsive and otherwise proper for acceptance. 40 Comp. Gen. 432, 435 (1961); 38 Comp.

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Gen. 819, 821 (1959); B-160663, January 26, 1967; B-148701, June 27, 1962. Although the Government could effect savings in some procurements by allowing correction of nonresponsive bids, the many decisions holding that a nonresponsive bid may not be corrected are manifestations of the principle that it is more in the interest of the Government to maintain integrity in the competitive bid system than it is to obtain a monetary gain in an individual award. B-161628, supra."

We have, however, recognized a very limited exception to this rule where the bid, as submitted, indicates not only the probability of error but also the exact nature of the error and the amount intended. B-177363, supra. In that case, for example, the bidder submitted a unit price of \$1,491 for the incremental quantities of 1 through 5, 6 through 15 and 26 through 35, but the bidder failed to insert a price for the middle quantity of 16 through 25. We concluded it was evident from the bidding pattern that the bidder intended to offer a unit price of \$1,491 on the 16 through 25 quantity also.

In the instant case, although you bid the same price for items 1 and 2, and each of the other bidders also submitted the same price for all items, we do not believe this establishes a pattern of bidding since item 3 called for more than twice as many units as items 1 and 2 combined and specified a delivery point on the east coast (Virginia) while the other items called for delivery on the west coast (California). Therefore, we do not believe we may conclude that you clearly intended to submit a bid on item 3. Moreover, we believe your offer of a price reduction for all items upon waiver of first article testing does not establish your intention to furnish item 3, since the price decrease reasonably may be construed as referring only to all the items for which a bid price of \$1.31 per unit was inserted, i.e., items 1 and 2.

With regard to your contention that correction should be permitted under the rule permitting bid modifications which make otherwise successful bids more favorable to the Government, we do not agree that the rule is applicable here since your bid is not otherwise acceptable and, in any event, you are not proposing to reduce your price.

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Finally, you have contended that the agency should have listed its requirements as a single line item in order to avoid the possibility of a bidding mistake. We find no basis for objecting to the format used, however, since the agency anticipated making separate awards for each destination.

Accordingly, your protest is denied.

Sincerely yours,

Comptroller General
of the United States