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DECISION



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

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FILE: B-183546

DATE: July 1, 1975

MATTER OF: Capay Painting Corporation

DIGEST:

1. Low bid may be corrected before award where bidder presented clear evidence of nature and existence of mistake and bid actually intended, and corrected bid does not displace any other bidder, notwithstanding allegations by second low bidder that correction is unjustified where manner in which error occurred is susceptible of two alternative explanations, since workpapers reveal that either explanation is reasonable and this Office will not disturb administrative determination to correct unless there is no reasonable basis therefor.
2. Submission of an unbalanced bid does not render bid nonresponsive. Record does not support protester's contention that low bidder could selectively obtain correction of any one of several bid items depending upon its competitive position.

Capay Painting Corporation (Capay) protests correction of the low bid of A-1 Cleaning, Sandblasting and Waterproofing of Austin, Inc. (A-1) under Invitation for Bids (IFB) No. DACW03-75-B-0031 issued by the Little Rock District, Corps of Engineers, for maintenance painting and cathodic protection system alterations on a dam.

Nine bids were received and opened on March 5, 1975. A-1's total bid was \$286,280 while that of Capay was \$344,468. The Government estimate was \$410,424.50. Since A-1's bid was approximately 30.35 percent lower than the Government estimate, the contracting officer asked A-1 to verify its bid and in particular its bid for item No. 2, Stoplog Installation and Removal. A-1's unit price for that item was \$100 whereas the Government's estimated unit price was \$4,135. On March 6, a representative of A-1 advised the contracting officer that A-1 had in fact made a mistake in its bid for item No. 2 and that the unit price should have been \$2,000. Subsequently A-1 submitted a letter to that effect and requested correction, submitting its original workpapers together with a notarized statement that the papers were A-1's "complete original and only copies".

Our Office consistently has held that to permit correction of an error in bid prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. 53 Comp. Gen. 232 (1973). The

same basic requirements for correction of a bid are found in Armed Services Procurement Regulation (ASPR) § 2-406.3(a)(2) (1974 ed.) which provides:

"* * * 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."

After consideration of the evidence submitted by A-1 in support of the alleged error, the procuring activity found as follows:

"a. Page 1 of the bidder's work sheets clearly shows that a unit price of \$2,000 each for Item No. 2 - 'Stoplog Installation and Removal' was intended in lieu of the unit price of \$100 each as shown on the bid submitted.

"b. The \$100 unit price for Item No. 2 used by the person typing the bid was the result of an instruction written on page 2 of the work sheets by the estimator which is quoted as follows: 'Mrs. Jolley! Note Type circled figures on bid schedule as estimated amounts & compute unit price by dividing quantities.' In accordance with stated instructions, Mrs. Jolley divided the \$2,000 each by 20, the estimated quantity of Bid Item No. 2, arriving at a unit price of \$100 each. Since neither the \$40,000 or the \$2,000 is circled, she possibly concluded the last figure was the total item amount, instead of the intended \$40,000. Another possibility is that Mrs. Jolley inadvertently used the \$2,000 circled immediately below as the total amount for Item No. 2, which in fact represents the total amount of Item No. 3.

"c. The bidder actually intended to bid \$2,000 each for Stoplog Installation and Removal, making a total amount of \$40,000 for Bid Item No. 2. Further credence to the bidder's intentions is offered on sheet 1 of 4 of the working papers where \$40,000 is divided by 20 and the quotient is expressed as \$2,000 each. When the intended unit price of Item No. 2, \$2,000 is substituted for the erroneous unit price of \$100, the total amount for Item No. 2 is changed to \$40,000 thereby increasing the total amount of Item No. 2 and the total bid price by \$38,000."

Accordingly, the procuring activity determined that the nature and existence of the mistake and the bid actually intended had been proven by clear and convincing evidence. Furthermore, since the granting of the requested relief would not result in a change in the relative standing of the bidders, the Army determined that correction would be justified. Administrative action has been withheld pending resolution of Capay's protest.

Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. 53 Comp. Gen. 232, 235 (1973).

Counsel for Capay calls our attention to the allegedly careless fashion in which A-1's bid was prepared. Capay contends that in order for an error of the magnitude involved here to have occurred, A-1 must have markedly departed from the normal bid preparation procedures, which, in short, entail the checking and double checking of a bid during all stages of preparation. Capay's skepticism is aroused by the fact that it was not permitted to examine A-1's workpapers on the ground that those documents contain proprietary data, which if released to a competitor might seriously damage A-1's competitive position. Nevertheless, from a reading of the Army's report, Capay alleges that since there exist two possible alternative explanations for how the error occurred, i.e., either Mrs. Jolley made a mistake by dividing \$2,000 by 20 or else she "inadvertently" used a circled \$2,000 amount appearing on the bid sheets for item No. 3, the bid should not be corrected. Notwithstanding the fact that the error is susceptible of two possible explanations, since from an examination of A-1's workpapers it is evident that either explanation is reasonable, we have no basis on which to question the administrative determination to permit correction.

Capay also alleges that A-1's bid is unbalanced, thereby making the bid nonresponsive and "permitting A-1 to select any of several bid items upon which to base its claim of error, depending on the price relationship between its bid and that of the next low bidder." Capay concedes that A-1's \$2,000 total bid for Item No. 2 would appear to be a bona fide mistake especially in view of the Government's estimate of \$82,700 and Capay's price of \$80,000. However, Capay points out that A-1's bids for Items 3 and 4-b appear inordinately low when compared to Capay's bid and the Government estimate.

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As a general rule, the fact that a bid may be unbalanced does not render it nonresponsive, nor does such factor invalidate an award of a contract to such bidder. 54 Comp. Gen. 206,208 (1974). Furthermore, A-1 cannot correct its bid absent clear and convincing evidence of the existence of the error, its nature, how it occurred and what the bidder actually intended to bid. ASPR § 2-406.3(d) (1974). In our opinion, A-1's original worksheets do not demonstrate the potential for supporting an allegation of error in the bids for either Item 3 or Item 4-b. We therefore find no support for Capay's contention that A-1's bid was susceptible of selective correction.

We note certain adjustments were made by the contracting officer to the extended prices for Items 4a, 5, 6a and 6b. The result of these recalculations was to lower A-1's original bid price by \$448.44. Since A-1 has accepted these adjustments, in view of the small amount involved and the large disparity between A-1's bid and that of the next low bidder, we have no reason to object to the changes as made. See Chris Berg, Inc. v. United States, 426 F. 2d 314 (Ct. Cl. 1970).

Accordingly, the protest of Capay is denied and the bid of A-1 may be corrected and award made to it provided that A-1 is found otherwise responsive and responsible.


Deputy Comptroller General
of the United States