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DECISION

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

FILE: B-203248 DATE: August 11, 1981

MATTER OF: R. H. Whelan Co.

DIGEST:

1. Seventh low bidder on one of four items in solicitation has sufficient interest under Bid Protest Procedures to protest decision of agency to permit low bidder to correct its bid where seventh low bidder may be eligible for award of other three items if correction of bid is denied.

2. Where agency determines on basis of work sheet and affidavits that error in transmission of bid to agent who submitted bid resulted in mistake in bid price, and that correction of mistake should be permitted, determination has reasonable basis and correction may be allowed pursuant to Defense Acquisition Regulation § 2-406.3 (a)(3).

R. H. Whelan Co. protests the decision of the Defense Logistics Agency to permit R.G. Robbins & Co., Inc. to correct a mistake in its bid submitted in response to invitation for bids DLA720-81-B-0392 issued by the Defense Construction Supply Center, Columbus, Ohio. For the reasons discussed below, the protest is denied.

The IFB was issued on March 18, 1981, for the procurement of four different size wood piles. Twelve bids were received on the opening date of April 4. Whelan was the low bidder on items 1, 2 and 3, and Robbins was the low bidder on item 4. Robbins' bid on item 4 was $461.50 per pile, substantially below the second low bid of $639.10 per pile. Robbins was evaluated as offering the lowest overall price on all 4 items on the basis of its "all or none" bid. However, because its bid on

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item 4 was substantially lower than all of the other bids, the contracting activity requested that the firm verify its bid on this item. On April 8, Robbins advised the contracting officer that it was withdrawing its bid because it had intended to bid $621.50 per pile but that the figures in its price were transposed during communication with its agent in Columbus, Ohio. Robbins, however, extended the acceptance period for its bid and on April 16 it requested that its bid be corrected under Defense Acquisition Regulation (DAR) § 2-406.3 (1976 ed.).

In support of this request, Robbins submitted its original work sheet and affidavits from those individuals involved in submitting the bid. Robbins' work sheet indicated that the intended bid was $621.50 per pile. According to the affidavit filed by the president of Robbins, this price was based on $8.12 per lineal foot for 70 feet of wood (this cost was verified by the firm's supplier, Oliver Treated Products, Inc.), $18 to assure sufficient revenue in case of additional shipping charges for raw materials, 3 percent "margin", and 3 percent discount. Mr. Robbins also stated that the firm's standard procedure for submitting bids is for his assistant to transmit the bid shown on the original work sheet by telephone from the firm's office in Tacoma, Washington to the Rock Abstracting Service in Columbus, which then as Robbins' agent submits the bid to the agency. According to the affidavit from the assistant who telephoned the bid to Rock, she believed she had transmitted the information as it appeared on the work sheet, but noted that at the time she had bronchitis which may have caused misinterpretation of what she had said. The employee of Rock who received the bid and submitted it to the contracting activity stated in his affidavit that he may have misheard the price given him or he may have been given incorrect information by the assistant, but that he was not certain how the mistake occurred.

The contracting officer referred the case to DLA Headquarters to determine whether Robbins should be allowed to correct its mistake. On the basis of the work sheet and the affidavits submitted, DLA concluded that clear and convincing evidence existed to establish the existence of a mistake and the bid actually intended. Thus, Robbins was permitted to correct its bid on item 4 to $621.50, <u>see</u> DAR § 2-406-3(a)(3), and since its all or none price remained low, it received the award.

DLA contends that Whelan, as the seventh low bidder on item 4, is not an interested party to challenge the agency's determination that Robbins be permitted to correct its bid on item 4. A party must be interested under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1981), in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement and the nature of the issues involved. Therm-Air Mfg. Co., Inc., 59 Comp. Gen. 255 (1980), 80-1 CPD 119. It is undisputed that if we determine that correction is not proper, and Robbins is permitted to withdraw its bid, Whelan would be in line for the award on items 1, 2 and 3. Thus, Whelan is an interested party because it is likely to receive a direct benefit if the protest is sustained.

Correction of an error in bid prior to award will be permitted when the bidder has submitted clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223. Although our Office retains the right to review administrative determinations, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and we will not disturb an agency's determination concerning correction unless there is no reasonable basis for such determination. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294.

The existence of the error and the bid actually intended may be established from the bid, the bidder's work sheet and other evidence submitted. See DAR § 2-406(a)(3). Our Office has found work sheets in themselves to be clear and convincing evidence if they are in good order and indicate the intended bid price, so long as there is no contravening evidence. Trenton Industries, supra. The work sheet here clearly indicates the intended bid price was $621.50 and in combination with the affidavit of Mr. Robbins it establishes how that price was calculated and that an error had been made. Upon review of the record, we believe that DLA's determination to permit correction of Robbins' bid price had a reasonable basis and therefore award based on the bid as corrected is proper.

Whelan expresses concern that if correction of mistakes is permitted after bid opening, an unethical bidder could bid extremely low and then upon learning its competitors' prices, declare a mistake in its bid, and secure an increased award in any amount up to the second low bid by showing how the error was made. However, the regulatory requirement that corrections be limited to those cases where the evidence clearly and convincingly establishes the existence of a mistake and the bid actually intended serves as a safeguard against this type of abuse. The closer an asserted intended bid is to the next low bid, the more difficult it is to clearly establish that the amount claimed was actually the intended bid, and for that reason correction is often disallowed when a corrected bid would come too close to the next low bid. See, e.g., Broken Lance Enterprises, Inc., 56 Comp. Gen. 1 (1976), 76-1 CPD 314; Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82. Moreover, the falsification of records is a criminal offense and a bidder submitting false or altered work sheets could be subject to the penalty provisions prescribed in 18 U.S.C. § 1001 (1976). See Hoyer Construction Co., Inc., B-187042, September 29, 1976, 76-2 CPD 296.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States