



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-179084

40075

October 17, 1973

Fraser-Volpe Corporation
1750 Costner Circle
Paul Valley Industrial Park
Warrington, Pennsylvania 18976

Attention: Mr. Joseph B. Volpe, Jr.
Executive Vice President

Gentlemen:

Reference is made to your letter dated July 3, 1973, and subsequent correspondence, protesting against the award of a contract to TSN Company, Inc. (TSN) under invitation for bids (IFB) No. DAAA21-73-B-0131, issued by the Department of the Army, Picatinny Arsenal, Dover, New Jersey.

The IFB, as amended, which called for an Electro-Optical Scanning System to verify that the proper legend has been clearly imprinted on the 105mm M67 propellant charge bags, established January 8, 1973, as the bid opening date. On that date, nine bids were received and recorded as follows:

TSN	\$ 8,758.00
Fraser-Volpe Corporation	33,654.00
ZIA Associates, Inc.	34,989.00
Food Technology Corporation	47,740.00
York Information System	41,375.59
Wellesley Instruments Corporation	43,600.00
Laser Sciences	63,900.00
Visicon, Inc.	69,300.00
Wood-Ivey System Corporation	73,600.00

Since TSN's price was substantially below the other bid prices, the procuring activity, pursuant to Armed Services Procurement Regulation (ASPR) 2-406.1, requested that TSN verify its bid price. By a telegram dated January 11, 1973, TSN alleged that it had made an error in its bid price and requested that its bid be corrected to \$30,856.00. By a letter dated January 17, 1973, TSN stated that the mistake occurred when its secretary erroneously transferred to the bid form only the total price shown on one of the four work sheets used in computing its bid price. TSN's work sheets were submitted to support its allegation together with one subcontractor quote and several potential suppliers' catalogs and price lists.

PUBLISHED DECISION
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"5. In its narrative statement, TSN explains that in filling out the bid set, the price was mistakenly submitted as shown on the first page of the worksheets as it was overlooked that the estimate consisted of 4 pages, the last of which contained the intended price. In review of this file, I find that addition of the various figures comprising the cost of the components to be correct and the addition of the costs of such components plus the cost of miscellaneous expenses, travel, freight, GSA and profit to be \$30,856.00 as shown on the fourth page. This information then discloses clear and convincing evidence of an error in bid and the intended bid price.

"6. Therefore, I hereby determine that in the best interest of the Government the contracting officer should be and hereby is authorized to permit TSN Company, Inc. to correct its unit bid price and the total amount of its bid to \$30,856.00 for item 0001 under IFB DAAA21-73-B-0131."

You contend that the revision of TSN's bid by 253 percent and 10 percent below the next lowest bid is in strong opposition to ASPR's intent. You further contend that the work sheets submitted by TSN to support correction cannot constitute clear and convincing evidence as to the bid price actually intended, since ASPR 2-406.3(e)(1) requires that all pertinent evidence be submitted so that work sheets alone cannot constitute a sufficient basis for a decision to correct the bid. You state that the very fact that the procuring activity and AMC could differ as to their interpretation of the data submitted by TSN demonstrates that the evidence is not clear and convincing.

You also contend that TSN was subject to the same business pressures as the other bidders and in addition, TSN's president signed its bid on December 11, 1972, so TSN had 28 days to review its bid to insure correctness. You state that the other bidders, who properly reviewed their bids, should not be penalized by TSN's negligence. You further allege that ASPR 2-406 as written better covers "routine procurements," where a mistake can be easily traced, and not procurements such as the IFB questioned here for the procurement of a customized scanner system, where it is almost impossible to present clear and convincing evidence. You conclude that to accept TSN's original bid on such evidence is an invitation to fraud in future procurements of this nature, since it is easy to fabricate work sheets for any value desired after learning at bid opening the amount of the other bids submitted.

With regard to your contention as to TSN's failure to submit data other than its work sheets, TSN in its letter of August 16, 1973, received in our Office on September 4, 1973, stated:

of the bid as corrected, provided that it is still lower than any other bid submitted. This procedure does not prejudice the other bidders, since correction will only be made upon a convincing showing of what the bid would have been at bid opening but for the mistake. In any case, this procedure is not for the benefit of the other bidders, but rather it is for the benefit of the United States so it can receive the procured goods or services at the lowest possible price.

The principles supporting this procedure have been followed by GAO since its creation by the Budget and Accounting Act of 1921, 42 Stat. 20, 23. See, for example, 2 Comp. Gen. 503 (1923). Prior to 1921, the Comptroller of the Treasury established this same general rule. See 20 Comp. Dec. 728 (1914). This procedure has also been sanctioned by the Court of Claims. Edmund J. Rappoli, Inc. v. United States, 98 Ct. Cl. 499 (1943); Chris Berg, Inc. v. United States, 192 Ct. Cl. 176 (1970).

The potential future fraud which you foresee flowing from a decision allowing correction in this case is protected against by the high standard of proof necessary before correction is authorized and the independent review of the submitted evidence by an appropriate higher authority such as AMC. Moreover, nothing prevents the submission of such cases, as has been done here, to GAO for our decision. See ASPR 2-406.3(f).

From the data furnished in support of the alleged error, we cannot conclude that there was no reasonable basis for the determination reached. Accordingly, your protest is denied.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States