



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

091682

B-179016

August 28, 1973

Hogens Construction Corporation
P.O. Box 10141
San Juan, Puerto Rico 00908

Attention: Mr. Miguel J. Nolla

Gentlemen:

We have reviewed all of the aspects of your protest against the consideration of your bid as submitted, and for the reasons that follow your request for relief must be denied. By letter dated June 21, 1973, your corporation requested our Office to either allow correction or withdrawal of the bid submitted by you under invitation for bids No. LACK17-73-B-0038, issued by The District Engineer, United States Army Engineer District, Jacksonville, Florida.

The subject invitation was issued on February 22, 1973, for the construction of a United States Post Office in Carolina, Puerto Rico. Bids were opened at 11 a.m. on April 5, 1973. Your firm's bid of \$463,231.87 was the low, and the only responsive, bid submitted.

By letter dated April 26, 1973, you advised the contracting officer that an error had been made in your bid. You alleged that your electrical subcontractor had orally quoted you a price of \$23,000. On this basis, you bid \$28,000 on this item, such amount including a \$5,000 profit factor. Your alleged error is now predicated upon the written bid of the subcontractor, for an amount of \$34,500, which was received by you on April 24, 1973, after submission of your formal bid. You were then advised by telegram on April 26, 1973, of what information the contracting officer would require in order to consider your claim of error. The required information was furnished by your letter of April 27, 1973.

All of the documents submitted on your behalf were examined by the South Atlantic Division Engineer and on May 11, 1973, he found that there existed no clear and convincing evidence that a mistake had been made. The quotation of April 24, 1973, submitted by the electrical subcontractor made no reference to a previous oral quotation and was dated 19 days after bid opening. Also, the worksheet you submitted made no reference to other specific subcontractors' quotes except for the one

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item in question. Since we understand that other subcontractor quotes were included in your bid, we question why the electrical subcontractor's quote was the only one specifically mentioned by name. Additionally, no explanation has been offered to clarify the computation of profit based on the increased subcontractor's bid. Therefore, no proof was uncovered to show that the original bid was not the bid intended. This finding was concurred in by the Chief of Engineers on May 29, 1973. Moreover, the contracting officer viewed the disparity of approximately 2 percent between your bid and the next low bid as not warranting the presumption of a mistake in bid.

On May 29, 1973, a Determination and Finding (pursuant to paragraph 2-406.3(b)(1) of the Armed Services Procurement Regulation (ASPR)) was reached by the General Counsel, Office of the Chief of Engineers, denying your request for correction and authorizing the contracting officer to consider your bid, as submitted, for award of a contract. On this basis, contract No. DACW17-73-C-9015 was awarded to your firm at the price submitted in your bid.

You refused acceptance of the award, claiming it was not acceptable as the Government had not allowed you to withdraw or correct your bid. You were notified on June 15, 1973, that the contract and bonds which had been delivered to your offices should be executed in accordance with page EF-2 of Standard Form #1, Bid Form. You were further informed that failure to so comply within 3 days would result in relief being sought under the terms of your bid bond. Based upon these circumstances, your firm executed the contract and bonds and gave notice on June 20, 1973, of appeal of the award to our Office.

Our Office, in 36 Comp. Gen. 441 (1956), held that:

"* * * In undertaking to bind a bidder by acceptance of a bid after notice of a claim of error by the bidder, the Government virtually undertakes the burden of proving either that there was no error or that the bidder's claim was not made in good faith. The degree of proof required to justify withdrawal of a bid before award is in no way comparable to that necessary to allow correction of an erroneous bid."

The facts of record do not establish that an error, as such, was made by Kogasa in computing its bid; rather it appears that subsequent events unforeseen at award now threaten to make the contract unprofitable. All that has transpired is that your company received a nonbinding oral electrical quotation which was increased when submitted in writing. Our Office has taken the position that an unexpected or increased cost of performance, whether foreseen or unforeseen, is a hazard which may be encountered during contract performance and such occurrence neither excuses nonperformance nor entitles the contractor to additional compensation. See B-175405, April 25, 1973.

B-175016

Accordingly, your request for relief is denied.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States

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