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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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B-279008

July 25, 1973

Bestest Foods
5501 Tabor Road
Philadelphia, Pennsylvania 19120

Attention: Mr. Ralph Busillo

Gentlemen:

Reference is made to your telefax message, dated June 26, 1973, and subsequent information furnished relative to your protest against the refusal of the Veterans Administration to award a contract to you under invitation for bids (IFB) No. 74-4.

The IFB requested bids for various dairy products for the period July 1, 1973, through June 30, 1974. The products were classified into 11 categories and 2 groups. Awards were to be made in the aggregate by group to the responsible bidder quoting the lowest aggregate price for all items in the group. The low aggregate offeror was to be determined by multiplying the unit price on each item by the quantity specified in the IFB and adding the extensions.

Six bids were received in response to the solicitation. An obvious error was noted in your bid. The prices for items 3 and 5 of group I were far in excess of the regular prices per gallon for milk. It was assumed that you had entered a "container"-price instead of the required "gallon"-price. The contracting officer's statement of May 24, 1973, states that it was not known, nor could it be determined from the bid, whether you were quoting on a 5-gallon or a 6-gallon container. The IFB permitted delivery in either size. In response to a request for bid verification, you advised that your bid prices on items 3 and 5 were based on 6-gallon container prices. Further, you advised the contracting officer that you did not process a 5-gallon container. The worksheets furnished in support of your claim repeated the Government's estimated gallons for the items involved and indicated that the bid prices were based on 6-gallon containers. Thus, from the worksheets, it is apparent that your understanding of the Government's estimated requirements was the same as provided in the IFB. The error occurred when you neglected to change your container price to a gallon price in the preparation of the bid.

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The contracting officer referred the matter to the VA Central Office with a recommendation that the bid be corrected. The recommendation was denied since correction of your high bid would have displaced the low bid and because your intended bid was not ascertainable substantially from the IFB and the bid itself.

You have protested the administrative decision on the basis that it is arbitrary and an abuse of discretion since it is inconsistent with the contracting officer's recommendation which was based upon the fact that there was an apparent mistake in your bid and your intended price was evident from your worksheets.

After consideration of the evidence pertaining to the error in bid, the VA Central Office noted that the governing regulation in the matter was section 1-2.406-3(a)(2) of the Federal Procurement Regulations (FPR) which states:

A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. * * *
(Underlining supplied.)

As noted above, correction of your bid would have displaced the low aggregate bid on group I. Further, although the worksheets you presented may manifest your intended bid, it was not apparent from the bid documents. Therefore, while the administrative decision was contrary to the contracting officer's recommendation, it was consistent with FPR 1-2.406-3(a)(2) and the correction was properly disallowed. This is so notwithstanding an award to you on the corrected basis would have been peculiarly advantageous to the Government. B-177707, April 3, 1973, 52 Comp. Gen. _____. See also 37 Comp. Gen. 210, 212 (1957), wherein our Office held:

The statutes requiring advertisement for bids and the award of contracts to the lowest responsible bidders are for the benefit of the United States in securing both free competition and the lowest competitive prices in its procurement activities. In certain cases where a mistake has been alleged promptly after opening of bids but before award of the contract, and there has been a timely presentation of convincing evidence that a mistake was

made, its nature, how it occurred, and what the bid price would have been except for the mistake, this Office has permitted the bid to be corrected. These cases have been relatively few in number, and the action has been taken only where the evidence submitted establishes beyond all doubt the actual intention of the bidder. Insofar as the cases have involved corrections to permit increases in low bids, which did not affect the relative standing of other bidders, they are in line with the decisions of the courts which have allowed additional compensation to a low bid contractor who, though refused permission administratively to correct his bid, has been able to present satisfactory proof that his bid was erroneous, together with a clear showing as to what he intended to bid. Edmund J. Rappoli Company, Inc. v. United States, 93 C. Cls. 499.

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* * * Where correction is allowed in a bid which is on its face the lowest received, and the correction does not make it higher than the next lowest bid, the rights of other bidders are not substantially affected; but in a case such as here presented, where a downward correction would result in displacement of one or more other bidders, we feel that the interest of the Government in preserving and maintaining the competitive bidding system requires that the rights of other bidders be considered as calling for denial of the correction, except where it can be ascertained substantially from the invitation and the bid itself.

Accordingly, your protest is denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States