

DOCUMENT RESUME

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[Correction of Clerical Error in Bid]. B-188929. August 11, 1977. 5 pp.

Decision re: Weatherrol Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Navy; Malek, Inc.
Authority: A.S.P.R. 2-406.2. A.S.P.R. 2-406.3(a)(3). 41 Comp.
Gen. 469. 41 Comp. Gen. 472. B-170450 (1970).

The protester alleged that a bid correction made by the low bidder after bid opening should not have been permitted. The bidder who submitted a bid price of \$27,427 for Bid Item No. 1 and a bid price of \$32,531 for Bid Item No. 2 alleged after bid opening that the bid price for Bid Item No. 2 was cumulative, contrary to the instructions of the invitation for bids. Correction of the bid mistake which resulted in displacement of the low bidder was proper since the mistake and the bid actually intended were ascertainable substantially from the bid when the bid price for Bid Item No. 2 was compared to other bid prices and the Government estimate. (Author/SC)

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DECISION



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

FILE: B-188929

DATE: August 11, 1977

MATTER OF: Weathertról Inc.

DIGEST:

Where bidder submits bid price of \$27,427 for Bid Item No. 1 and bid price of \$32,531 for Bid Item No. 2 and alleges after bid opening that bid price for Bid Item No. 2 is cumulative, that is, includes bid price for Bid Item No. 1, contrary to instruction in IFB, correction of bid mistake which resulted in displacement of low bidder was proper since mistake and bid actually intended are ascertainable substantially from bid when bid price for Bid Item No. 2 is compared to other bid prices and Government estimate.

On February 25, 1977, the Department of the Navy (Navy) issued invitation for bids (IFB) N62467-77-B-9212. Bid Item No. 1 called for the installation of reciprocating-type air compressor units, and Bid Item No. 2 called for the installation of screw-type air compressor units. More specifically, the IFB provided as follows:

"(1) BID ITEM NO. 1: Price of the entire work for installation of reciprocating type air compressor units complete in accordance with the drawings and specifications but not including work indicated or specified to be provided under any of the other bid items.

"(2) BID ITEM NO. 2: Additional price of the entire work for installing screw type rotary air compressor units in lieu of the reciprocating type air compressor units, complete in accordance with the drawings and specifications.

"(c) Evaluation of Bids. The funds available for this project, known as the control amount, will be recorded prior to bid opening and announced at bid opening. The low bidder for purposes of award shall be determined in accordance with the provision of this solicitation entitled 'Additive or Deductive Items,' Clause 21 of the Instructions to Bidders."

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Clause 21 of the Instructions to Bidders provides, in pertinent part, as follows:

"If this invitation includes more than one bid item, the following clause applies.

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. * * *"

On April 5, 1977, the bids were opened with the following results:

<u>Bidder</u>	<u>Bid Item 1</u>	<u>Bid Item 2</u>
Malek, Inc.	\$27,427	\$32,531
Weathertrol Inc.	\$28,370	\$ 4,950
Cactus Utility Co.	\$31,968	\$ 5,515
Tezel & Cotter Air Conditioning Co.	\$36,797	\$ 2,972

After bid opening, Malek, Inc. (Malek), informed the Navy that its bid price for Bid Item No. 2 was cumulative, that is, it included both the bid price for Bid Item No. 1 and the bid price for Bid Item No. 2. The Navy determined that this was a clerical error evident on the face of Malek's bid and awarded Malek a contract in the amount of \$32,531 for Bid Items No. 1 and No. 2. In support of its action, the Navy calls attention to our decision in B-170450, November 13, 1970. The Navy contends that this decision stands for the proposition that a contracting officer has authority, pursuant to section 2-406.2 (1976 ed.) of the Armed Services Procurement Regulation (ASPR), to correct a bid where a cumulative price for an additive item is an obvious error. ASPR § 2-406.2 (1976 ed.) provides as follows:

"Apparent Clerical Mistakes. Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended.

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Examples of such apparent mistakes are: obvious error in placing decimal point; obvious discount errors (for example-1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. factory; obvious error in designation of unit. Correction of the bid will be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction will not be made on the face of the bid; however, it shall be reflected in the award document."

In B-170450, supra, the IFB instructed bidders to submit a bid price for Item No. 1 (the base bid) and a separate price for Item No. 2 (an additive). A bidder contended that its bid price of \$193,200 for Item No. 2 was cumulative, that is, it included the bid price for Item No. 1 as well as the bid price for Item No. 2 instead of a price for only Item No. 2, as required by the IFB.

The procuring activity advised that this was a common mistake because under a prior bidding system used by the activity amounts bid for additives were accumulated, that is, they included the price of the base bid. The procuring activity also contended that the mistake and the intended bid were evident from the bid when it was compared with other bid prices and the Government's estimate. We noted that while the bidder's bid bond was adequate for a total bid of \$193,000, it fell far short of the combined total of \$131,261 bid for Item No. 1 plus \$193,200 bid for Item No. 2. We went on to hold that:

"* * * we agree with the Department's position that an error was apparent on the face of the bid, and in view of the procuring activity's experience with mistakes of a similar nature * * * together with other factors such as the Government's estimate, other bid prices, and the amount of the bid bond, we believe that correction of the bid, following verification of the error by (the bidder) would have been proper under ASPR 2-406.2."

Weathertrol Inc. (Weathertrol) contends that correction on the basis of an apparent clerical error should not have been permitted because it is just as reasonable to assume that Malek misplaced a decimal point in submitting its bid price for Bid Item No. 2 as it is to assume that Malek's bid price for Bid Item No. 2 was cumulative.

Since the correction of Malek's bid involved the displacing of a low bidder, the applicable requirements of ASPR § 2-406, 3(a)(3) (1976 ed.), quoted below, should have been met:

"When the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would result in displacing one or more lower 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. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

In interpreting this ASPR provision, we have held that:

"The question whether a bidder may be permitted to change his bid after the bids are opened because of an error always presents a matter of serious concern. A possibility of fraud or collusion, the maintenance of the integrity of the competitive bid system, and the interests of the Government and the other bidders must be taken into consideration. In cases where a downward correction would displace one or more other bids, we have permitted correction only when the bid documents themselves showed that there was an error and what the bid would have been except for the error." 41 Comp. Gen. 469, 472 (1962).

The instant case is similar to B-170450, *supra*. For example, a mistake in bid price is evident on the face of Malek's bid when Malek's bid price of \$32,531 for Bid Item No. 2 is compared to other bids and the Government's estimate of \$7,600. In addition, Malek confirmed that its bid price for Bid Item No. 2 was cumulative.

Based on the foregoing, it is our opinion that the existence of the mistake and the bid price actually intended for Bid Item No. 2 (i.e., the difference between the bid price for Bid Item No. 1 and the bid price for Bid Item No. 2) are ascertainable substantially from the bid itself. Consequently, we find that the

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Navy properly permitted correction of Malek's bid, thus making Malek the low bidder. Even if we assume that Malek had intended to bid \$3,253.10 for Bid item No. 2 and had misplaced a decimal point, as the protester suggests, Malek's aggregate bid price would still have been low.

Accordingly, the protest is denied.

R. F. Kelly
Deputy Comptroller General
of the United States