

Proc I

DECISION



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

10,205

FILE: B-193531

DATE: May 16, 1979

MATTER OF: F. Hodgson & Sons

DIGEST:

Agency determination that evidence establishes mistake in bid but not intended bid, therefore bidder may be permitted to withdraw but not correct its bid, will not be disturbed by this Office where it cannot be concluded there is no reasonable basis for determination.

✓ DLG-01603
F. Hodgson & Sons (Hodgson) has protested the decision of the Director, Office of Administrative and Management Policy, Department of the Interior (Director), denying the request of John M. Carroll Construction Company (Carroll) to correct an alleged mistake in its bid after opening but prior to award, while at the same time allowing Carroll to withdraw its allegedly mistaken bid prior to the award of the contract. AGC
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DLG-01604

Hodgson's interest in the disposition of Carroll's request for correction results from the fact that Hodgson's entitlement to part of the award depends upon whether Carroll is allowed correction or only to withdraw its bid. In these circumstances, we will consider the protest.

AGC00076
The Bureau of Reclamation, Department of the Interior, solicited bids under invitation for bids (IFB) "No. 10-C0055 - for site preparation, operational hydromet system, Thief Valley Dam, and Wildhorse Dam, Boise Project, Oregon and Nevada." The solicitation provided for bids on two schedules (schedule No. 1 Thief Valley Dam-- schedule No. 2 Wildhorse Dam) with award to be considered on either or both of the schedules but not for only a part of a schedule. Bidders were also allowed to submit an "all or none" bid for both schedules. Three bids were received and opened on August 31, 1978. Bid opening revealed that Hodgson was the low bidder on schedule No. 1 in the amount of \$24,359. The engineer's estimate on schedule No. 1 was \$27,250. The low bid on schedule No. 2, in the amount of \$3,000, was submitted by Carroll,

[Request To Correct ALLEGED Mistake
in Bid]

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and was substantially below the engineer's estimate of \$12,000. The low bidder for both schedules, with the stipulation that the bid was "all or none" for schedules Nos. 1 and 2, or for schedule No. 1 only, was Alexander Construction Company (Alexander), in the combined amount of \$31,936.50. The engineer's combined estimate for schedules Nos. 1 and 2 was \$39,250.

Since Carroll's bid on schedule No. 2 was 75 percent below the Government estimate, the contracting officer suspected a mistake may have been made and requested Carroll to review and verify its bid. In fact, the contracting officer's request crossed in the mail with Carroll's letter of September 6, 1978, in which it claimed an error had been made in its bid due to an oversight in preparation. On September 14, 1978, Carroll delivered its worksheets to the contracting officer for review stating that the mistake was made when it received a lower price quotation for telemetry cable and subtracted this amount from item 10 of schedule No. 2, rather than from item 4 of schedule No. 1 as it should have done. Carroll further stated that the error was committed because it did not have time to sufficiently review and recap all the cost elements and ramifications of reducing the item 10 total of schedule No. 2 in its bid. If Carroll had been allowed to correct its bid, the resulting total on schedule No. 2, Wildhorse Dam, would have been \$6,000.

The contracting officer reviewed the documentation and concluded that a mistake had been made, and that the amount bid for item 4 of schedule No. 1 indicated that if the \$3,000 error had been deducted Carroll would still not have been low bidder for schedule No. 1, Thief Valley Dam. However, if Carroll had been allowed to correct and increase its bid on schedule No. 2, Wildhorse Dam, it would still have remained the low bidder on that schedule. As a result of his review of Carroll's worksheets the contracting officer recommended that Carroll be allowed to correct and increase its bid to \$6,000. The contracting officer further recommended that contract awards be made to Hodgson for schedule No. 1, and Carroll for schedule No. 2, which he stated would provide the lowest aggregate price. Finding that the evidence was clear and convincing as to the mistake in Carroll's bid and also as to Carroll's intended bid, the office of the Commissioner of Reclamation concurred with the contracting officer's report and recommendations.

However, in the Director's formal consideration of Carroll's request for a correction of its mistake in bid prior to award, he determined in pertinent part as follows:

"The worksheets show that a \$3,000.00 reduction was written in on item no. 10. Although a mistake was obviously made on item 10, it cannot be clearly determined as to the exact amount Carroll Construction intended to bid on item 4. Carroll Construction fails to meet all of the criteria under Federal Procurement Regulations § 1-2.406-3(a)(2), which permits correction of a bid when there is clear and convincing evidence both as to the fact that an error was made, 'and as to the bid actually intended.'

"Therefore, because Carroll Construction has failed to meet all of the criteria of Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2), correction is not permitted, and Carroll Construction, pursuant to FPR § 1-2.406-3(a)(3), is permitted to withdraw his bid."

In U.S. Royal Maintenance, B-193470, January 15, 1979, 79-1 CPD 21, we set out the requirements for correcting a mistake in bid after bid opening but prior to award, where another bidder will not be displaced as a result of the correction, by stating that "the bidder must show by clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price." See also, E. Walters & Company, Inc., B-192346, September 25, 1978, 78-2 CPD 228. This standard of proof is specified in Federal Procurement Regulations (FPR) § 1-2.406-3(a)(3) (1964 ed.). However, we have also recognized that 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. See, Murphy Brothers, Inc. - Reconsideration, B-189756, December 28, 1978, 78-2 CPD 440, and cases cited therein. Thus, we have reasoned that a bidder requesting correction is required to clearly and convincingly establish the actual bid intended because it would obviously be unfair to other bidders and detrimental to the integrity of the competitive bidding system to allow the bidder,

after bid opening, to first determine what bid price it should have submitted. Western States Construction Company, Inc., B-191209, August 29, 1978, 78-2 CPD 149, and cases cited therein.

The authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency pursuant to the terms of FPR § 1-2.406-3(a) (1964 ed.), subject to the following provision for review by this Office contained in FPR § 1-2.406-3(e) (1964 ed.):

"(e) Nothing contained in this § 1-2.406-3 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any bidder of his right to have the matter determined by the Comptroller General should he so request. All doubtful cases shall be submitted to the Comptroller General for advance decision in accordance with agency procedures."

In defining our scope of review pursuant to this regulation we have stated that the weight to be given to the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. J.W. Creech Inc., B-191177, March 8, 1978, 78-1 CPD 186.

Therefore, our concern in the present case is not whether we would have necessarily reached the same result as the administrator designated to evaluate the evidence of the claimed error in the first instance, but rather whether there was a reasonable basis for the agency's conclusion in this regard. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294. We have examined the specifications along with Carroll's worksheets and all other evidence furnished in support of the request for correction, and cannot conclude that the Director's determination that the evidence presented was not clear and convincing as to the bid actually intended did not have a reasonable basis.

We also note that the recommendation of the contracting officer, which was concurred in by the Commissioner of Reclamation, that correction be allowed because the evidence was clear and convincing as to Carroll's intended bid, in no way bound the Director. Gichner Mobile Systems, B-189996, January 30, 1978, 78-1 CPD 73. FPR § 1-2.406-3(d)(3) (1964 ed.) requires that cases of mistake in bid shall be referred to the appropriate authority for determination. Thus, any recommendation made by the contracting officer is in no way reflective of the Director's independent consideration of the issue of mistake in bid.

The protest is denied.


Deputy Comptroller General
of the United States