11863 Fitzmaurice

DECISION

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

FILE: B-206252 DATE: June 8, 1982

MATTER OF:
J.O. Collins, Contractor, Inc.

DIGEST:

Where a bidder's prices for one base and two additive items increased cumulatively, contrary to instructions for additive pricing in the IFB, agency's correction of the bid mistake and award to that bidder were proper since the mistake and the intended bid prices were ascertainable from the submitted bid prices and the Government estimate.

J.O. Collins, Contractor, Inc. (Collins), protests the award of a contract to RLT Joint Ventures of Mississippi, Inc. (RLT), under invitation for bids (IFB) No. N62467-80-B-0641, issued by the Naval Facilities Engineering Command, Southern Division (Navy), Charleston, South Carolina.

We deny the protest.

The IFB solicited bids for the construction of a training mockup at the Naval Construction Battalion Center, Gulfport, Mississippi. Bidders were required to bid on three items. The first, or base item, was "the entire work complete in accordance with the drawings and specifications," but not including the work specified under the other two items, which was the "[p]rovision of stabilized aggregate base shoulder extension" under additive item No. 1 and the "[p]rovision of 7 foot high chain link fence around equipment storage area" under additive item No. 2. The evaluation of bids was to be made in accordance with clause 21 of the Instructions to Bidders, "Additive or Deductive Items," which provided in pertinent part:

> "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. * * *"

The parties involved in this protest submitted the following bid prices:

	Base Item	Add. No. 1	Add. No. 2
RLT	$177,411	$179,111	$184,111
Collins	179,000	10,000	9,000

After bid opening, RLT informed the Navy that its bid prices for additive items Nos. 1 and 2 were cumulative rather than additive. In other words, RLT prices under the additive items were not just for the additional work called for under those items, but a total price for all the required work. In additive form, therefore, RLT's respective prices for the three items were as follows:

Base Item	Add. No. 1	Add. No. 2
$177,411	$1,700	$5,000

The Navy determined that RLT's error was obvious on its face and that the cumulative and additive tabulations were mathematically identical. Consequently, the Navy determined that RLT had submitted the lowest aggregate bid for the project and Collins the second low. The Navy awarded the contract to RLT in reliance upon our decision in Masee Builders, Inc., B-204450, February 1, 1982, 82-1 CPD 72.

Collins protests the award on the grounds that the Navy is allowing RLT to correct an alleged mistake in bid which is not a mere clerical error as the Navy maintains. Collins argues that there is nothing on the face of RLT's bid to indicate that any mistake had been

made. According to Collins' calculations, RLT's total bid is:

Base Item :	$177,411
Add. No. 1:	179,111
Add. No. 2:	184,111
	$540,633

Since Collins' bid, totaled in the same manner, comes to only $198,000, Collins maintains that it is the low bidder. In light of this, Collins argues that Defense Acquisition Regulation (DAR) § 2-406.3(a)(3) (1976 ed.) is controlling in this matter. This section provides that, when a bidder requests permission to correct a mistake in its bid, there must be clear and convincing evidence that there is a mistake, as well as clear and convincing evidence of the bid actually intended and, if the correction results in the displacement of an otherwise low bidder, the correction will not be allowed unless the existence of the mistake and the bid actually intended are "ascertainable substantially from the invitation and the bid itself." According to Collins, since RLT would be displacing it as the low bidder, RLT must satisfy the DAR § 2-406.3(a)(3) requirement that the existence of the mistake and the bid actually intended be ascertained substantially from the invitation and the bid itself. In Collins' opinion, this cannot be done. Therefore, the protester concludes that, under the provisions of DAR § 2-406.3(a)(3), Navy should not have allowed the correction and instead should have awarded the contract to Collins. In support of its position, Collins cites McCarty Corporation v. United States, 499 F.2d 633 (Ct. Cl. 1974).

We find that the decision cited by the Navy, Masse Builders, Inc., supra, is controlling here. In that decision, the protester made an argument almost identical to the one Collins makes. As in the present case, a bidder, contrary to the IFB's instructions for additive pricing, submitted cumulative prices for the base and additive items. The protester argued that this bid was nonresponsive and that the agency was wrong in allowing the bidder to adjust its prices after opening since this was unfair to the other bidders and in violation of the competitive bidding system. However, we held that the Navy's correction of the mistake and subsequent award to the bidder

were proper since, as required by DAR § 2-406(a)(3), both the mistake and the bid prices actually intended were ascertainable from the submitted bid when compared to the other bid prices and the Government estimate.

We reach the same conclusion here. The pattern in RLT's bid is quite clear--the prices for the additive items are obviously the price for the base item increased by an additional sum. Moreover, an examination of the Government estimate ($236,000/$6,800/$10,100) and the other bids show that RLT's bid only makes sense when viewed as the Navy has argued.

Collins points out that Barrow Construction bid $500,000 for each one of the three items and argued that this shows that its calculation of RLT's bid at $540,633 is accurate. However, we believe that, like RLT, Barrow Construction was indicating that it would do all the required work for $500,000, even if the work included both additive items. Therefore, we do not find this argument persuasive.

As to McCarty Corporation v. United States, we find that case distinguishable from the present situation. There, the Court of Claims held that the Army Corps of Engineers acted in a discriminatory, arbitrary and capricious manner when it refused a proper request by the lowest bidder to correct an error in its bid and then improperly corrected both the lowest bid and an error in the second lowest bid which resulted in the displacement of the lowest bid. The court concluded that the Corps of Engineers had failed to give the lowest bid the fair and honest treatment required by law and, thus, was required to reimburse the lowest bidder for its bid preparation costs.

The Court of Claims reached its holding in McCarty in large part by finding that the requirements of DAR § 2-406.3(a)(3) could not be met and, therefore, that the Corps of Engineers had no basis for correcting the two bids on its own initiative and thus displacing the lowest bidder. However, we have concluded that, under the provisions of DAR § 2-406.3(a)(3), the Navy did act properly in ascertaining RLT's mistake and the bid prices actually intended. Therefore, the McCarty case is not applicable here.

Since the contract has been awarded, Collins requests reimbursement for the costs of preparing its bid. However, in view of the fact that we have found Collins' protest to be without merit, there is no basis for allowing a claim for bid preparation costs.

We deny the protest and disallow the claim for bid preparation costs.

Milton J. Socolar

for Comptroller General
of the United States