

DECISION

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

FILE: B-208114; B-208880 **DATE:** October 20, 1982

MATTER OF: Schweigert Construction;
Bob Bak Construction

DIGEST:

1. Where second low bidder claims a mistake in its bid which, if corrected, would cause the firm to displace the low bidder, the mistake may not be corrected if the intended bid is not ascertainable from the bid itself.
2. Where a very low unit price does not correspond to the extended total price, and based on the Government estimate and the other bids only the extended price is reasonable, the extended price must control for purposes of bid evaluation and may not be corrected downward to correspond to the unit price.
3. A bid that appears to be mathematically unbalanced on 1 of 24 line items may be accepted where there is no reasonable doubt that award based on the total bid for all items would not result in the lowest ultimate cost to the Government, and the bid thus is not materially unbalanced.
4. Protest filed with GAO more than 10 working days after receipt of initial adverse agency action on a protest to the contracting agency is untimely.
5. Protest alleging that the second low bid is unbalanced is academic and will not be considered because the second low bidder is not in line to receive award.

Schweigert Construction and Bob Bak Construction protest the award of a road construction contract to A-G-E Corporation under invitation for bids (IFB) No. A00-0189

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issued by the Department of the Interior's Bureau of Indian Affairs (Bureau). Schweigert, the second low bidder, contends that the Bureau erred in denying its mistake in bid claim which, if allowed, would have permitted a downward bid correction placing Schweigert in line for award. Schweigert also argues that A-G-E submitted an unbalanced and possibly mistaken bid which should not have been accepted by the Bureau. Bob Bak, the third low bidder, contends that both A-G-E and Schweigert submitted unbalanced, unacceptable bids. We deny Schweigert's protest and dismiss Bob Bak's.

Schweigert Protest

Alleged Mistake in Bid:

Eight bids were received in response to the IFB. A-G-E submitted the low total bid of \$839,944.94. Schweigert was second low with a bid of \$855,622.71. The Bureau reports that when the bids were checked by comparing unit prices and totals for each line item, the contracting officer found an arithmetic discrepancy between the unit and total prices in Schweigert's bid for item No. 625(9), which was submitted as follows:

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
125.62	Acre	\$ 2.65	\$33,289.30"

The Bureau surmised that Schweigert intended either to bid a unit price of \$265.00, which extends to the \$33,289.30 line item total, or the unit price of \$2.65, which extends to a total \$332.89. Since the Government's unit price estimate for item 625(9) was \$300 per acre (a total of \$37,686.00), and since the other seven bids ranged from \$280.00 per acre (\$35,173.60 total) to \$380 per acre (\$47,735.60 total), the contracting officer concluded that Schweigert's extended price was correct and that the firm simply had misplaced a decimal point in its unit price, so that it intended to bid \$265.00 per acre.

Contrary to this conclusion, Schweigert claimed that its unit price of \$2.65 was correct and alleged a mistake in its extended price which, Schweigert said, should have been \$332.89, not \$33,289.30. Thus, Schweigert argues

that it should have been allowed to correct its total bid for item 625(9) downward from \$33,289.30 to \$332.89, which would have made Schweigert the low aggregate bidder.

Generally, an agency may permit a bidder to correct a mistaken portion of its bid after bid opening only when the bidder presents clear and convincing evidence of both the existence of a mistake and the bid actually intended. Federal Procurement Regulations (FPR) § 1-2.406-3(a)(1) (1964 ed.). Where, as here, correction would result in displacement of another bidder, the intended bid must be ascertainable from the bid itself. FPR § 1-2.406-3(a)(3).

In deciding cases involving bid corrections which would displace the low bidder, we generally have examined the degree to which the asserted correct bid is the only reasonable interpretation, ascertainable substantially from the bid itself, of the claimed mistake. For instance, we have denied correction where there was no way to tell from the bid whether a unit price or its discrepant total was correct and either would have been reasonable. Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD 279. Conversely, we have permitted correction of a unit price to correspond to an extended total where the total price represented the only reasonable alternative. See East Bay Auto Supply, Inc., B-192012, September 5, 1978, 78-2 CPD 170.

Here, however, the other bids and the Government estimate indicate that of the unit and extended prices for item 625(9) entered in Schweigert's bid, the only reasonable price is the one allegedly not intended, i.e., the extended price. Where an allegedly intended unit bid price is grossly out of line with the Government estimate and the other bids, while the allegedly mistaken extended price is entirely reasonable, we simply cannot conclude that the firm's intention to bid the former is ascertainable from the bid itself, as required in a displacement situation. See Value Precision, Inc., B-191563, August 7, 1978, 78-2 CPD 97. We therefore will not disturb the Bureau's determination to deny Schweigert's mistake claim and not to allow downward correction of the extended price for item 625(9). See HD Company, B-205693.2, August 9, 1982, 82-2 CPD 117.

Alleged Unbalanced/Mistaken Bid:

Schweigert contends that A-G-E's bid was unacceptable because it was unbalanced and possibly mistaken. The protester bases this contention on the fact that A-G-E bid a unit price of \$1.00 per thousand gallons of water required by line item 607(2) while the other seven bidders offered unit prices for this item ranging from \$4.00 to \$7.00.

The mere fact that a firm bids low--even below cost--on one of a number of line items listed in an IFB does not in itself lead to the conclusion that the bid should be rejected as unbalanced. There are two aspects to unbalanced bidding. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the work is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is not materially unbalanced, and thus unacceptable, unless there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Jimmy's Appliance, B-205611, June 7, 1982, 82-1 CPD 542.

The record shows that the contracting officer actually discussed the matter of A-G-E's low bid on item 607(2) with the firm, and was satisfied that the bid accurately reflected A-G-E's cost for that item. Moreover, Schweigert does not suggest that A-G-E enhanced its prices for bid items other than item 607(2). Under the circumstances, we have no basis to conclude that A-G-E's low bid was unbalanced so that acceptance of it will not result in a lower cost to the Government than acceptance of any other bid. See Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107.

Similarly, in view of the contracting officer's request and receipt from A-G-E of both an explanation and verification of the bid on item 607(2), we will not further consider Schweigert's suggestion that A-G-E's unit price of \$1.00 was mistaken.

Finally, to the extent that A-G-E's bid for either item 607(2) or the entire effort solicited indeed may be below cost, that possibility does not constitute a legal basis for precluding or disturbing a contract award to a firm found responsible, that is, capable of performance at the bid price. Hybrid Abstracts, B-207085, May 24, 1982, 82-1 CPD 488.

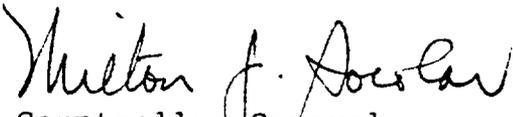
Bob Bak Protest

Bob Bak, the third low bidder, protested to the contracting officer on July 6 that both A-G-E and Schweigert submitted unbalanced and therefore unacceptable bids. The contracting officer denied the protest concerning the alleged unbalancing of A-G-E's bid in an August 13 letter received by Bob Bak on August 16. Bob Bak then filed a protest with our Office on the matter on September 1 (our date of receipt).

Our Bid Protest Procedures at 4 C.F.R. § 21.2(a) (1982) provide that once a protest has been timely filed with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 working days of knowledge of initial adverse action by the contracting agency regarding the protest. Since Bob Bak had knowledge of the initial adverse action on August 16, its delay in filing its protest with our Office until September 1 renders the protest on issues concerning A-G-E's bid untimely and not for consideration on the merits. Scan-Data Corporation, B-192442, October 11, 1978, 78-2 CPD 268. In any event, the basis for Bob Bak's protest on the matter is the same as Schweigert's, which we have rejected as discussed above.

Bob Bak's protest that Schweigert's bid is unbalanced and therefore unacceptable is academic because Schweigert, the second low bidder, is not in line to receive award. Major Consolidated, Inc., B-204596, November 23, 1981, 81-2 CPD 420.

Schweigert's protest is denied, and Bob Bak's dismissed.


Acting Comptroller General
of the United States