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MARRIS

DECISION



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

FILE: B-210022

DATE: March 31, 1983

MATTER OF: American Museum Construction Division
of Byer Industries, Inc.

DIGEST:

The closer an asserted intended bid is to the next low bid, the more difficult it is to clearly establish that the asserted bid is the one actually intended. Where correction would bring the bid within one-tenth of 1 percent of the next low bid, and the intended bid can only be established by resort to an affidavit and an envelope on which the final bid was allegedly calculated just prior to bid opening, the agency's decision not to permit correction is reasonable.

American Museum Construction Division of Byer Industries, Inc. (AMC) protests the decision of the Army Corps of Engineers to permit withdrawal but not correction of its bid under invitation for bids (IFB) No. DACA31-82-B-0063 for renovation of a commissary building. We deny the protest.

Bid opening was on August 3, 1982; eight bids were received. The apparent low bid was that of Prince Construction Company in the amount of \$349,868. The next low bid was that of AMC in the amount of \$353,300. The third and fourth low bids were submitted by C&L Construction Company in the amount of \$453,537 (subsequently found to be nonresponsive) and Porter Contracting Company, Inc. in the amount of \$454,000. The Government estimate for the work was \$428,000.

Because of the disparity between the Government estimate and the bids of Prince and AMC, the contracting officer requested verification of their bids. Prince alleged a mistake in bid and was permitted to withdraw.

By letter of August 4, 1982, AMC also alleged an error in its bid. The letter stated that the error occurred when AMC's president phoned his office shortly before bid opening to receive last minute subcontractor quotes. In adding these quotes to its bid on a hand held calculator, he failed to enter "one zero" resulting in a \$100,000 mistake in bid.

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In a subsequent meeting with agency personnel, AMC again explained that the error occurred while its president was adding subcontractor quotes to its bid during a phone conversation between himself and his office. The nature of the error, however, was described as the failure to enter the number "1" from the figure \$120,930 when adding it to the figure \$325,570. The total of these figures was thus erroneously calculated as \$346,500 rather than the correct sum of \$446,500. At this time, AMC stated that the earlier explanation of the mistake as the omission of "one zero" was incorrect, and resulted from its haste to alert the agency that a mistake in bid had been made. It submitted a handwritten draft copy of its August 4 letter to show that as drafted, the letter described the error as the failure to enter "one ____." This was erroneously typed as "one zero" and no one noticed the error before the letter was mailed.

In support of its claim, AMC submitted the work papers used in preparing its bid, as well as an envelope on which its president recorded the subcontractor quotes received by phone and then added them to its previously prepared bid amount. The envelope shows the following entries:

163,000	Mech.	Hugh
75,000	Elec.	M&T
49,573	Sprinkler	Capitol
7,800	Paint	Shield
<u>295,973</u>		
10% 29,597		
<u>325,570</u>		
120,930		
<u>346,500</u>		
		[Correct amount is \$446,500]
Bond etc. 6,800		
<u>353,300</u>		

In addition, AMC submitted affidavits from its president and his secretary explaining how the error occurred, as well as affidavits from each subcontractor whose bid was used in computing AMC's bid. The subcontractor bids are also recorded in AMC's worksheets, as is the figure of \$120,930 (for work to be performed by AMC itself including profit and overhead). The worksheets contain the \$6,800 amount too, which is shown as a total of three figures--\$5,100 for bond, \$700 for miscellaneous and \$1,000 for "dumpster." The worksheets do not show the 10 percent amount added to the subcontractor quotes, nor do they show how the \$5,100 amount for bonding was calculated.

Defense Acquisition Regulation (DAR) § 2-406.3(a)(2) (1976 ed.) provides that a bid may be corrected provided that both as corrected and uncorrected it is low, and the evidence is clear and convincing as to the existence of a mistake and as to the bid actually intended. After examining the documents submitted by AMC in support of its claim, the Army concluded that the evidence was clear and convincing as to the existence of a mistake, but not as to the bid actually intended. Accordingly, AMC was not permitted to correct its bid.

The Army's position is that AMC's intended bid cannot be clearly established because it cannot determine from AMC's worksheets what the 10 percent figure added to the subcontract costs on the envelope represents, or how the bond costs were calculated. The agency also observes that AMC has not requested any increase in its bonding costs even though it has requested an upward correction of its basic bid.

Further, the agency notes that correction of AMC's bid would bring it within one-tenth of 1 percent of the next low bid, a result which the agency concludes would adversely affect the integrity of the competitive bidding system. In a similar vein, several inconsistencies in AMC's statements in support of its claim are noted, such as its original assertion that the mistake resulted from the omission of "one zero" rather than the omission of a one.

AMC contends that its intended bid is clear from its worksheets and the envelope on which its president wrote the subcontractor quotes and added up its total bid. The protester argues that these documents plainly show a mistake in addition which it should be permitted to correct.

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AMC explains that the 10 percent figure added to its subcontractor costs represents profit and states that it does not charge overhead on work it does not itself perform. AMC has submitted documentation to demonstrate that this is its normal practice; however, this documentation was not originally submitted to the Army. The protester also asserts that whether the 10 percent figure represents profit, or overhead, or both is irrelevant since it is clearly documented that AMC intended to add that amount to its bid.

Concerning bonding costs, AMC states that its practice is to calculate them by multiplying its estimate of the total contract price by 1.2 percent. The result is then used to calculate AMC's bid. The protester explains that it estimates these costs in order to save time since subcontractor quotes are frequently not received until shortly before bid opening.

Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for such determination. Sentinel Electronics Inc., B-194209, August 24, 1979, 79-2 CPD 150. Here, we find a reasonable basis for the agency's decision.

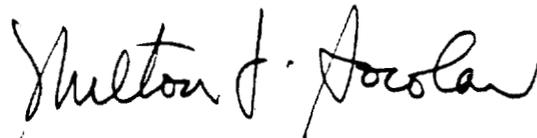
The mistake-in-bid rules are intended to permit relief to bidders who make genuine mistakes in their bids; the paramount concern of the rules, however, is the protection of the competitive bidding system. Panoramic Studios, B-200664, August 17, 1981, 81-2 CPD 144. It has been argued that bid correction after bid opening and the disclosure of prices compromises the integrity of the system, which to some extent, at least, is true. P.K. Contractors, Inc., B-205482, April 22, 1982, 82-1 CPD 368. Nonetheless, the potential for abuse flowing from a decision to allow correction is protected against by the high standard proof necessary before correction is permitted. Id.

Thus, the closer an asserted intended bid is to the next low bid, the more difficult it is to clearly establish that it is the bid actually intended, and for that reason, correction is often disallowed when a corrected bid would come too close to the next low bid. R. H. Whelan Co., B-203248, August 11, 1981, 81-2 CPD 123. Here, we are faced with just such a case--the correction of AMC's bid would bring it within less than one-tenth of 1 percent of the next low bid.

AMC's intended bid cannot be ascertained from its worksheets since they neither show how it calculated its bonding costs nor contain the 10 percent figure which AMC says it adds to subcontractor costs for profit. Instead, resort must be made to an envelope on which AMC's president allegedly calculated its final bid just prior to bid opening, and to the president's affidavit which explains how AMC calculated these amounts.

Without questioning the truth of either of these documents, we do not think they meet the very high standard of proof required for bid correction in a case such as this. Where, as here, the amount of the alleged error is substantial, and the difference between the corrected bid and the next low bid is small, to accept such evidence to establish the intended bid would adversely affect the integrity of the competitive bidding system. See Fortec Constructors, B-203190.2, September 29, 1981, 81-2 CPD 264. Further, we agree with the agency's conclusion that permitting correction of AMC's bid after AMC changed its explanation of the nature of the error, would undermine public confidence in the competitive system, regardless of the reason for AMC's changed position. Therefore, we conclude that the Army acted reasonably when it denied correction of AMC's bid.

The protest is denied.


for Comptroller General
of the United States