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DECISION

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

FILE: B-218095 **DATE:** March 15, 1985

MATTER OF: Quality Roofing Co., Inc.

DIGEST:

Agency determination to permit upward correction of low bid as a result of mistake alleged after bid opening but prior to award is reasonable where worksheets and affidavits clearly showed mistake and intended bid.

Quality Roofing Co., Inc. (Quality), protests the decision by the Department of the Army, Corps of Engineers (Corps) to permit M.C. & D. Capital Corporation (MC&D) to correct a mistake in its low bid under invitation for bids No. DACA27-84-B-0060, for the reroofing of four warehouses.

We deny the protest.

The Corps received three bids in response to the solicitation. MC&D's low bid was $3,675,675, Quality's second low bid was $4,888,880, and the high bid was $8,581,500. The government estimate for the work was $4,492,200. The Corp's district office requested MC&D to verify its bid because its price was substantially lower than the other bids and the government estimate.

MC&D replied that its bid contained a clerical error. According to MC&D, it had inadvertently failed to add a factor intended to cover the costs of Workman's Compensation Insurance, union fringe benefits, liability insurance, and federal taxes. This factor was labeled "Insurance," and was computed by taking 45 percent of its other direct labor costs. Those costs totaled $1,301,100, so the insurance factor was to be $585,495. Since it had added 10 percent for overhead and 10 percent for profit to its combined labor and materials costs, MC&D requested that those factors also be applied to the amount for insurance. Thus, MC&D requested correction in the amount of $708,449, raising its bid to $4,384,124.

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In support of its request, MC&D initially submitted two worksheets to the district office and, upon request by the Office of the Chief Engineer, later submitted two explanatory affidavits executed by the individuals who prepared the bid.

The first worksheet is titled "Material" and shows a detailed listing of material costs, with a total amount of $1,603,648. The second worksheet is titled "Labor." That worksheet shows 20 items of direct labor costs which total $1,301,100. The worksheet also has a preprinted entry space that states "Insurance on $." The worksheet has "1,301,100" entered in that space. In the next column to the right is "45%," and in the next column is the product of those figures "585,495." Below those entries are three entries not included in the total for direct labor, and to the right of those are two more entries not included in that total. At the bottom right of the worksheet is the calculation that yielded the bid amount:

$1,434,100.00	Labor
1,603,648.00	Material
3,037,748.00	
303,774.80	10 percent O.H.
3,341,522.00	
334,152.20	10 percent Profit
$3,675,675.00	

The 1,434,100 figure for labor is the total of all the costs on the labor worksheet, with the exception of the $585,495 amount for insurance.

The affidavit of the person who prepared the bid explains how the mistake was made. According to the bid preparer, the 20 direct labor items were totaled and 45 percent of that amount was calculated to cover the insurance costs and was entered in the appropriate space on the form. The bid preparer then intended to add the cost of the 20 direct labor items, the insurance amount, and the five miscellaneous job cost items to arrive at a total labor cost. The additions were made on an adding machine, and the amount of insurance was inadvertently omitted. The bid preparer states that he checked the adding machine tapes against the worksheets, but did not notice the discrepancy.

The second affidavit, executed by the person who reviewed the bid, states that he did not recalculate the amounts, but only checked the various individual costs and totals for reasonableness. He also verified and approved the percentages used for overhead and profit.

The district office determined that a mistake had been made, but that the intended bid price could not be established with certainty. Essentially, the district office decided that because the percentage of profit on a job often varies with the total cost of the job, it was not certain that the 10 percent figure would have been used if the labor costs had been increased by the amount for insurance. Consequently, the district recommended that MC&D be permitted to withdraw its bid, but not to correct it. The district office decision was made without the affidavits.

The Office of the Chief Engineer reversed the district office and permitted correction in the requested amount. According to the Office of the Chief Engineer, the worksheets and explanation are consistent with the alleged mistake and intended bid. The Office of the Chief Engineer considers the district office's concern that the 10 percent profit figure would not be used as overly speculative in the absence of some evidence to the contrary.

Quality's protest essentially attacks the veracity of the worksheets and affidavits, and attempts to provide an alternate explanation for the mistake. Quality also raises two peripheral arguments. One argument is that there are other worksheets and, therefore, the Corps' decision was not based on the entire record. The other argument is that the affiants do not in fact hold the positions in the corporate structure of MC&D that they purport to hold.

Quality argues that MC&D's mistake was, in fact, a mistake in the estimation of the amount of reroofing to be performed and, as such, is not properly correctable. As evidence of this, Quality cites an entry of 17,000 for "Warranty" on MC&D's worksheets. Quality asserts that the industry standard price for warranties is $3 per square (a roofing term representing 100 square feet). Dividing 17,000 by 3 equals 5,667 squares, which must be MC&D's estimate of work. According to Quality, its estimate of the work to be performed is 8,537 squares, and the Corps' estimate is 9,000. Quality contends that MC&D could not have based its bid on an estimate in the 9,000 square range, because it could not possibly provide a warranty and material at the unit prices derived from dividing MC&D's worksheet figures for materials and warranty by 9,000. Quality argues that MC&D misestimated the roofing work to be done, and is attempting to recoup the costs by fabricating this mistake claim.

As evidence that the worksheet evidence is fabricated, Quality argues that the entry for insurance was not entered contemporaneously with the other entries because its digits and commas are not aligned with the digits and commas of the other entries. Quality also challenges the assertion that one person prepared all of both worksheets. Quality points to what it considers to be variations in handwriting and darkness of entries. Also, Quality points out that the basic labor rate stated on the worksheet appears to already include some fringe benefits, yet MC&D is claiming another factor that includes fringe benefits.

Quality surmises that there are other worksheets that have not been made available to the Corps or to our Office. As evidence, Quality points to the statement on each worksheet "As per Petris [spelled Petres on one worksheet] takeoff." Quality also cites the contracting officer's characterization of the mistake as a failure to transfer certain costs from working papers to summary sheets. According to the protester, a determination based on less than the entire record can not be reasonable.

Finally, Quality argues that the person who prepared the bid is not the vice president of MC&D as he swore, but is listed on an official document (State of California Statement by Domestic Stock Corporation) as the Corporate Secretary. Also, Quality asserts that the person who checked the bid is not the Chief Executive Officer of MC&D, as he swore, but rather is the Chief Executive Officer of a subsidiary company.

The Federal Acquisition Regulation, 48 C.F.R. § 14-406-3 (1984), provides that a bidder who asserts, prior to award, that its bid is in error may be permitted to correct the bid upward if it provides clear and convincing evidence of the mistake and the intended bid price. If correction would not displace the next low bidder, then evidence may include worksheets and other submissions, as well as the bid. Grandville Electric, Inc., B-213406, Feb. 22, 1984, 84-1 C.P.D. ¶ 222.

While our Office reviews bid correction determinations, the basic authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. In recognition of that, and because the weight to be given to evidence is a question of fact, we will not disturb an agency's determination unless the protester shows that it has no reasonable basis. Harry Curley & Sons, B-213749, Feb. 28, 1984, 84-1 C.P.D. ¶ 249.

Our review of the record shows that the Office of the Chief Engineer had a reasonable basis to permit correction in this case. Contrary to Quality's assertions, the worksheets appear to be untampered with and the explanation of the mistake and intended bid appears to be consistent with the worksheets. Quality's objections are, for the most part, based on pure speculation.

Concerning Quality's claim that MC&D underestimated the quantity of work to be performed, the worksheets show explicitly and consistently that MC&D's estimate was in excess of 9,000 squares. MC&D states that the warranty entry on its worksheet does not refer to the manufacturer's warranty, but rather covers the cost of the contractor's warranty required under the specifications, and the cost of a 2-year contractor warranty against poor workmanship that is required by the manufacturer. This is supported by the fact that the entry is labeled "M.C.&D. Warranty." MC&D claims that it included the cost of the manufacturer's warranty in its material cost.

Regarding Quality's contentions that the worksheets appear to exhibit different handwriting and that the insurance entry appears to be different, we have closely examined the original worksheets, and are unable to concur with Quality. On Quality's copy of the worksheets the entry for insurance does appear to be darker than the other entries. However, on the original worksheets, which we examined, that is not the case. It appears that the apparent darkness was caused by the fact that the entry for insurance was highlighted in blue on the original worksheets. When the original worksheets were copied the blue highlighting apparently had the effect of making the entry look darker on the copy. In any event, we have held that the criminal penalities prescribed by 18 U.S.C. § 1001 (1982) for false statements adequately protect the government when worksheets that are readily susceptible to tampering are used as evidence in a mistake claim. Schoutten Construction Company, B-215663, Sept. 18, 1984, 84-2 C.P.D. ¶ 318.

Concerning Quality's contention that there are other worksheets, the "Petris takeoff" refers to an estimate of the quantity of work to be performed. The statement by the contracting officer appears to be nothing more than an imprecise way of stating that costs were omitted in bid preparation. The worksheets are detailed and complete. It is not clear what Quality thinks might be on other sheets.

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We fail to understand Quality's concern about the precise titles of the individuals involved in bid preparation. Both individuals are clearly principals of the corporation, and one prepared and the other verified the bid.

Finally, Quality argues that a pre-bid opening telegraphic increase in the price of the already mailed bid must be reflected in the workpapers. We disagree. The inquiry before us is the nature of discrepancy between the amount finally bid and the intended bid as shown on the worksheets. We are not concerned with whether the final bid was entered in one sum or in increments.

Protest denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel