

**DECISION**



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

**FILE:** B-220067

**DATE:** January 22, 1986

**MATTER OF:** Western Alaska Contractors

**DIGEST:**

Where contract was awarded to low bidder which alleged mistake in its bid before award and parties agreed that contractor could pursue mistake claim, contract should be reformed to increase price in amount equal to an electrical subcontractor's quotation, because bid workpapers contain clear and convincing evidence that electrical subcontractor's quotation was mistakenly omitted from bid. However, contract should not be reformed to reflect claimed markup on electrical subcontractor's quotation, because bid workpapers do not show any markup or percentage used to compute markup for subcontract work nor do workpapers show any pattern of applying markup on individual cost items.

Western Alaska Contractors requests our review of the Army Corps of Engineers' denial of its preaward request to correct a mistake in its low bid submitted in response to invitation for bids No. DACA85-85-B-0036 issued by the Alaska District of the Corps for construction of miscellaneous mechanical and electrical maintenance and repair projects at Shemya Air Force Base. Notwithstanding the alleged mistake, Western Alaska was awarded the contract at its uncorrected bid price of \$2,455,000. The parties agreed, however, that Western Alaska could present its preaward claim for bid correction to our Office for resolution.

We find that Western Alaska's contract should be reformed to allow upward correction representing the amount of a subcontractor quotation which was inadvertently omitted by Western Alaska from its bid. However, Western Alaska's request for correction in an additional amount representing markup on the omitted subcontractor quotation is denied.

The basic facts are not in dispute. Six bids were received by the Corps in response to the invitation, ranging

from Western Alaska's low bid of \$2,455,000 to the highest bid of \$3,947,957. Western Alaska's bid was \$741,000 (approximately 23 percent) below the next low bid and \$149,000 (approximately 6 percent) below the government estimate of \$2,604,000. Because its bid was considerably below all other bids and the government estimate, Western Alaska checked its bid prices, and, shortly after bid opening, Western Alaska notified the Corps that it had discovered that an electrical subcontractor's quotation of \$237,483, plus its markup of 32.67 percent of that amount (\$77,586), had erroneously been omitted from its bid price. Thus, Western Alaska requested that the Corps allow it an upward correction of \$315,069 which would increase Western Alaska's total bid price to \$2,770,069.

Western Alaska submitted its worksheets, memoranda documenting subcontractor quotations it had received by telephone, and a sworn statement by one of its partners certifying that all documents submitted were the original documents used in calculating the bid and explaining how the error occurred. Upon review of these materials, the contracting officer determined that, while the worksheets confirmed the existence of this mistake, Western Alaska should not be permitted to correct its bid because it had failed to produce clear and convincing evidence of its intended bid price. The matter was then referred to the Corps' Office of the Chief of Engineers for additional consideration. Ultimately, the Office of the Chief of Engineers agreed with the contracting officer's findings and denied Western Alaska's request for correction. Western Alaska subsequently accepted award of the contract at the original bid price and the parties agreed that Western Alaska could present its claim to our Office for resolution. Accordingly, Western Alaska has pursued its claim before our Office and our decision is based upon a review of all of the material previously presented to the Corps, additional correspondence submitted by the parties to our Office, and a conference which we granted at Western Alaska's request.

According to Western Alaska, the mistake occurred as follows. Western Alaska received a telephone quotation from its electrical subcontractor in the amount of \$237,483, and a new estimator entered this amount on the bid spreadsheet in a column labeled "ELEC." Western Alaska received a telephone quotation from its mechanical subcontractor only 12-15 minutes before bid opening. The estimator entered the mechanical subcontractor's quotation in a separate column of the spreadsheet labeled "MECH" instead of putting both

subcontractor quotations in the same column as is the normal Western Alaska practice. Since the mechanical subcontractor's quotation was 23 percent lower than the only other subcontractor quotation for mechanical work, Western Alaska decided to use it in the last few minutes before bid opening. In the haste caused by the decision to use the new mechanical subcontractor quotation, only the figure for the mechanical subcontract was transferred to the bid summary worksheet which was used to prepare the bid. Thus, because of the rush to compile the bid and because the subcontractor quotations had originally been entered in two separate columns on the spreadsheet, the electrical subcontract quote was inadvertently omitted from the bid summary sheet and the markup for this portion of the work was not calculated and added to the bid price.

Western Alaska asserts that the markup it would have added to its bid for the electrical subcontractor's work can be computed by working backwards from the figures which appear on its bid summary sheet which shows a "subtotal" of \$1,867,000 and a "basic bid" total of \$2,477,000. According to Western Alaska, the difference of \$610,000 is entirely comprised of markup and is equal to 32.67 percent of the subtotal. Using the same percentage to calculate markup on the electrical subcontractor quotation results in \$77,586 additional markup. Thus, Western Alaska wants to modify its present contract to reflect the electrical subcontract (\$237,483) plus markup (\$77,586) for a total upward adjustment of \$315,069.

Essentially, the Corps admits that Western Alaska has provided evidence in its worksheets that the electrical subcontractor quotation was not carried forward from the spreadsheet to the bid summary sheet for eventual incorporation into the bid. However, the Corps takes the position that it is not possible to tell with certainty what Western Alaska actually intended to bid. The Corps points out that the 32.67 percent now used by Western Alaska to compute markup does not appear anywhere in the worksheets supplied by Western Alaska. The Corps also points out that there are a number of unexplained discrepancies between the figures which appear in the bid summary sheet and the figures used in the bid. For example, the largest single discrepancy is contained in the bid summary worksheet which shows a total bid of \$2,477,000, or \$22,000 more than the total which Western Alaska actually bid. The Corps further cites several instances in which Western Alaska rounded up certain figures from its bid worksheets before transferring those figures to the bid summary sheet. Moreover, the Corps

argues that Western Alaska has not explained why it waited until just a few minutes before bid opening to transfer its electrical subcontractor quote to its bid summary sheet when, in fact, this quote was received 2 days earlier. Thus, the Corps concludes that Western Alaska has not provided sufficient evidence of its intended bid to justify correction.

Applicable regulations provide that a mistake in bid alleged before award may be corrected where the bidder presents clear and convincing evidence establishing both the existence of the mistake and the bid actually intended, provided that the correction would not result in the displacement of a lower bid. Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(a) (1984). In judging the sufficiency of the evidence, we consider factors such as the closeness of the corrected bid and the next low bid as well as the range of uncertainty in the intended bid. In general, the closer an asserted intended bid is to the next low bid, the more difficult it is to establish that it was the bid actually intended and, for this reason, correction may be disallowed when a corrected bid would come too close to the next low bid. See Crimson Enterprises, Inc., B-213239, May 8, 1984, 84-1 C.P.D. ¶ 513. See also Aleutian Constructors, B-215111, July 12, 1984, 84-2 C.P.D. ¶ 44. In this respect, we note that Western Alaska's bid would still be \$425,931 below the next low bid if the full \$315,069 upward correction were allowed.

From our examination of Western Alaska's workpapers, we conclude that there is indeed clear and convincing evidence that Western Alaska merely neglected to carry the electrical subcontractor's quotation of \$237,483 forward from the spreadsheet to the final summary worksheet and the bid itself. The workpapers contain memoranda of telephone quotations received from an electrical subcontractor and a mechanical subcontractor. The exact figures contained in each telephone quotation memorandum are then listed in separate columns in the earliest workpaper--the spreadsheet. However, Western Alaska's final workpaper--the bid summary sheet--contains only the mechanical subcontractor's quoted price but not the price quoted by the electrical subcontractor. Furthermore, the workpapers show that subtotals representing all other cost components were transferred from the initial spreadsheet to the final bid summary sheet. Western Alaska's explanation of how the electrical subcontractor's quote was omitted when figures were transferred from one workpaper to another is plausible in view of the last minute substitution of one subcontractor for another

and the inexperience of the estimator. Thus, we conclude that it is clear that the electrical subcontractor quotation of \$237,483, was erroneously omitted from the calculation of Western Alaska's bid.

Concerning the markup of \$77,586 which Western Alaska claims it would have added to its bid based upon the amount of the electrical subcontractor's quotation, we agree with the Corps that the evidence does not show that this amount would have been added to Western Alaska's bid if the electrical subcontractor's quotation had not been erroneously omitted. The worksheets contain no indication that a particular percentage was used by Western Alaska to calculate markup for any particular direct cost item. Furthermore, comparison of the individual cost components contained in the spreadsheet and in the final bid summary worksheet with the prices charged for those items in the actual bid reveals no consistent pattern for adding markup to various cost items. In our view, the omission of any worksheet entries which would show any markup related to subcontract work and the lack of any consistent pattern of applying markup to individual cost elements are significant. See Franco, B-214124, May 1, 1984, 84-1 C.P.D. ¶ 488 at 8. While Western Alaska argues that the markup can be calculated by working from its bid summary worksheet in the manner described above, we do not agree. In fact, the bid summary worksheet shows a figure of \$500,000 for "overhead & fee." Thus, it appears that Western Alaska may have used a flat fee to incorporate markup into its bid rather than adding a particular percent for markup to individual cost items, and, therefore, Western Alaska might not have increased the markup charged in its bid at all. In any event, we agree with the Corps that the amount of any additional markup related to the electrical subcontract work is at best speculative. Accordingly, we conclude that Western Alaska has not presented clear and convincing proof of the amount of any additional markup it intended to bid, and, therefore, the contract should not be modified to adjust for markup. See Pneumatic Construction Co., B-207871, Aug. 31, 1982, 82-2 C.P.D. ¶ 193.

Western Alaska argues that it should be allowed to correct for both the omitted electrical subcontract work and related markup because its bid will remain low despite whatever range of uncertainty there might be in determining its intended markup. In support of this argument, Western Alaska cites several prior decisions of our Office,

including Fortec Contractors, B-189949, Nov. 15, 1977, 77-2 C.P.D. ¶ 372, as well as the decision by the United States Court of Claims in Chris Berg, Inc. v. United States, 426 F.2d 314 (Ct. Cl. 1970), as standing for the proposition that bid correction should be allowed even where the intended bid cannot be established with certainty as long as the range of uncertainty is relatively small compared to the difference between the corrected bid and the next low bid.

While we agree that, in limited circumstances, correction can be allowed even when the intended bid cannot be determined exactly and that such correction is not inconsistent with the standard of requiring clear and convincing evidence of the intended bid (see, for example, Dadson Corp., B-210413, June 7, 1983, 83-1 C.P.D. ¶ 618 and Western States Construction Co., Inc., B-191209, Aug. 29, 1978, 78-2 C.P.D. ¶ 149), we do not believe that the circumstances of the present case present a narrow range of uncertainty regarding the claimed markup. As stated above, our review of the workpapers shows no evidence that any markup above the flat \$500,000 figure for "overhead & fee" would have been added because of the electrical subcontract work. In any event, we have held that, if there is a range of uncertainty regarding the intended bid, correction should place the contractor at the bottom end of that range, not at the top end of the uncertain range as Western Alaska claims here. See Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 C.P.D. ¶ 369 at 4. Thus, we believe that the evidence supports correction of the omission of the electrical subcontractor quotation but not markup based upon that quotation.

In connection with the Corps' concern over a number of discrepancies it found in the various workpapers submitted by Western Alaska, we do not view the alleged discrepancies as precluding correction in this case. Several of the alleged inconsistencies appear to be the result of the bidder's rounding off its figures during the calculation of its bid prices; such rounding off does not preclude correction of an erroneous bid if the intended bid can be shown from the workpapers. See George C. Martin, Inc., B-187638, Jan. 19, 1977, 77-1 C.P.D. ¶ 39 at 4; see also Chris Berg, Inc. v. United States, *supra*. Moreover, most of the discrepancies which were found by the Corps concern portions of the worksheets which have little relation to the type of error claimed by Western Alaska or to the type of work affected by the error; accordingly, these discrepancies do not preclude correction since the failure to transfer the electrical subcontract quotation to the bid has been

established by clear and convincing evidence. Franco, B-214124, supra, 84-1 C.P.D. ¶ 488; Active Fire Sprinkler Corp., 57 Comp. Gen. 438 (1978), 78-1 C.P.D. ¶ 328. Finally, in view of the fact that Western Alaska's uncorrected bid was for a total of \$2,455,000 and the largest discrepancy pointed out by the Corps was only \$22,000 or less than one percent of the total bid price, the alleged discrepancies are de minimis, having only a negligible combined effect on the bid price, and do not preclude correction. Chris Berg, Inc. v. United States, supra; see also Dadson Corp., B-210413, supra, 83-1 C.P.D. ¶ 618.

We therefore recommend that the Corps reform Western Alaska's contract to increase the price by \$237,483, representing the omitted electrical subcontract quotation.

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General Counsel