



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Interior--Mistake in
Bid Claim

File: B-222681

Date: July 23, 1986

DIGEST

Correction of bidder's mistake in computing the price for quarrying 500,000 tons of riprap (large rock) is appropriate where: 1) the bidder mistakenly applied a subcontractor's orally quoted price to the required amount of riprap instead of to the subcontractor's estimate of 825,000-865,000 tons of rock material necessary to yield the required riprap; and 2) the corrected bid (even using 865,000 tons) is significantly lower than the next low bid. Since the tonnage to which the bidder would have applied the subcontractor's quoted price is uncertain, correction is limited to the bottom of the range of uncertainty (825,000 tons).

DECISION

The Department of the Interior (Interior) requests review of a mistake in bid claimed by K2B Constructors, Inc. (K2B) under invitation for bids (IFB) No. 5-SI-60-01490. The IFB was issued by Interior's Bureau of Reclamation for the quarrying, hauling, and stock-piling of 500,000 tons of graded riprap plus additional amounts of waste rock at the Buffalo Bill Reservoir, Cody, Wyoming. Riprap is large rock material of minimum sizes set forth in the IFB. Interior states that before the award, K2B alleged that it misunderstood a subcontractor's quotation for a portion of the work, but agreed to perform the contract at its bid price with the stipulation that the matter be reviewed by the Comptroller General. Interior has recommended that correction be allowed.

We find that K2B's contract should be reformed to correct the mistake.

Six bids were received in response to the IFB, ranging from K2B's low bid of \$6,406,180 (after correction of an extension error) to \$13,007,364. K2B's bid price is 14 percent below the government's estimate of \$7,459,250 and \$2,267,720 (26 percent) below the next low bid.

The alleged mistake involved only the IFB's line item covering the quarrying of 500,000 tons of riprap. K2B offered a unit price of \$6.99 per ton and an extended price of \$3,495,000. K2B alleges that these prices were based in part on a subcontractor's oral quotation of \$1.40 "per pay ton," which K2B misunderstood to mean \$1.40 for each ton of the required amount of riprap rather than for the total tonnage of rock

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material necessary to yield the 500,000 tons of riprap required by the IFB. In this regard, the IFB stipulated that rock materials unacceptable as riprap would be considered waste material for which no payment would be made. After bid opening, K2B received the subcontractor's written confirmation of the quotation, dated before bid opening, which indicated that the \$1.40 price applied to 825,000-865,000 tons of rock material that the subcontractor estimated would have to be drilled to yield the required riprap. The increased tonnage entailed additional costs to K2B of \$455,000-\$511,000.

Even with these added costs, the subcontractor's quotation was still lower than any other subcontractor's quotation obtained by K2B. K2B therefore requested that its unit price for quarrying riprap be increased by \$1.02 per ton to \$8.01, effecting an increase in the extended price of \$510,000. The \$1.02 unit price is the whole-cent price that is closest to effecting the costs of drilling an additional 365,000 tons of rock material at a cost of \$511,000 based on the upper limit of the subcontractor's quotation. With the requested correction, K2B's total bid of \$6,916,180 would be \$1,757,720 (20.2 percent) below the next low bid of \$8,673,900.

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. § 14.400-3(a) (1985). The record clearly indicates that K2B misapplied the subcontractor's quotation of \$1.40 per pay ton, and Interior has concluded that there is clear and convincing evidence of the mistake. Since K2B mistakenly computed its bid price as though the subcontractor's unit price applied to only the required 500,000 tons of riprap, K2B's bid price reflects its actually intended bid. The question in this case is whether K2B's bid may be corrected to reflect the subcontractor's intended price of \$1.40 per ton for the entire amount of rock necessary to yield 500,000 tons of riprap.

A bidder generally may not obtain correction for even a clearly mistaken bid based on computations or recomputations performed after bid opening to reflect a price that the bidder never intended before bid opening. Roebbelen Eng'g, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, *aff'd*, Roebbelen Eng'g, Inc.--Reconsideration, B-219929.2, Mar. 31, 1986, 86-1 CPD ¶ 301. The law recognizes, however, that not every mistake is simply a clerical error entailing the failure to transcribe actually intended figures, and that the rule preventing corrections based on computations performed after bid opening should not be applied so rigidly as to preclude corrections of any mistakes aside from transcription errors. Vrooman Constructors, Inc.--Request for Reconsideration, B-218010.2, Mar. 17, 1986, 86-1 CPD ¶ 257. Correction therefore may be allowed even though the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and remain low after correction. Id.

Correction, however, is limited to increasing the contract price to reflect the bottom of the range of uncertainty. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369.

The sufficiency of the evidence to establish the intended bid depends on the extent of the range of uncertainty and the closeness of the corrected bid to the next low bid. The closer the top of the range of uncertainty is to the next low bid, the more difficult it is to establish an intended bid, and correction may be disallowed where the corrected bid is too close to the next low bid. Id.; Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125.

Under the circumstances of this case, correction is not inconsistent with the standard of clear and convincing evidence establishing an intended bid price within a narrow range of uncertainty below the next lowest bid. K2B clearly intended to use the quotation of \$1.40 per ton, and as applied to the tonnage estimated by the subcontractor, the quotation still was lower than any others obtained by K2B. The only uncertainty regards the tonnage to which K2B would have applied the quotation, since the subcontractor estimated that it would be necessary to quarry between 825,000 and 865,000 tons of rock material. Based on those quantities, K2B's bid price could have fallen within a \$55,000 range--from \$6,861,180 to the alleged intended bid price of \$6,916,180, which still is approximately 20 percent less than the next low bid. Thus, K2B's bid falls within a narrow range of uncertainty (less than 1 percent of the total bid) of which the upper end is significantly lower than the next low bid. Since the bid may be corrected only to the bottom of the range of uncertainty, correction should be limited to reflect only the additional cost of \$455,000 for quarrying an additional 325,000 tons of rock material.

We therefore recommend that Interior reform K2B's contract to reflect an increase of \$455,000 in the extended price for quarrying riprap, representing the bottom of the range of uncertainty as to K2B's intended bid price.

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