



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C.W.R. Construction, Inc.
File: B-224301
Date: December 2, 1986

DIGEST

1. Judgmental error, where bidder made a knowing judgment and assumed a known risk at the time it submitted its bid, by computing the bid on the basis of its own estimate of its subcontractor costs, is not a mistake that requires rejection of the bid since the bid as submitted was the bid actually intended.
2. Where the low bidder verified its bid for an additive item significantly lower than the other bids and the government estimate, after the contracting officer pointed out the price discrepancy, the agency may properly consider the bid as originally submitted. The mere fact that the bid may be low, or even below cost, is no basis to preclude contract award.

DECISION

C.W.R. Construction, Inc. protests the Department of the Army's proposed contract award to Charles N. White Construction Company under invitation for bids (IFB) No. DACA56-86-B-0005 for construction of a binary weapons production facility at Pine Bluff Arsenal, Pine Bluff, Arkansas. C.W.R. primarily contends that White's bid contained an obvious mistake and therefore could not properly be accepted by the agency. We deny the protest.

The IFB requested a base bid on 11 separate line items, including the construction of two buildings, a sentry station, a boiler house, and a storage magazine. The IFB also contained two additive items; one for upgrading and extending an existing railroad line and another for additional work on one of the new buildings. Award was to be made to the firm whose bid was low for the base bid plus those additives within the funds available for the procurement. White's bid was low for each of the additive items and also was low

overall, although C.W.R. submitted the low base bid. (C.W.R. was second low overall.) The contracting officer determined that funds were available for all three items, and thus that White was in line for award.^{1/}

After bid opening, the contracting officer sent a letter asking White to review the IFB and its working papers, and to confirm the amount of its bid. The agency states that this request was made because White's total bid was well below the government estimate (although close to that of C.W.R.). White responded by stating that it had reviewed the specifications and plans, and its workpapers, and confirmed that its offer was correct. White also stated, however, that it was enclosing a corrected bidding schedule. White explained that it had been impossible to break down the bid items correctly when the original bid was submitted. White noted that its total base bid and each of its additive bid amounts had not changed. In other words, the error allegedly occurred in allocating the prices over the various items in the bid schedule, but not in the bottom line (total) prices.

After receipt of White's response, the agency telephoned the firm and informed it that the corrected bidding schedule would not be accepted. White replied that it understood and had no objection. White also explained that the revised price schedule represented a detailed price breakdown after it got its final subcontractor prices.

After C.W.R. protested to the agency against the proposed award to White, the contracting officer again requested that White review and verify its bid. The contracting officer's letter specifically pointed out that White's base bid was approximately 28 percent lower than the government estimate, that its bid for additive No. 1 was approximately 75 percent lower than the government estimate and 18 percent below the second low bid, and that its bid for additive No. 2 was approximately 87 percent lower than the government estimate and 78 percent below the second low bid. White again replied that it had reviewed its calculations, along with the plans and specifications, and that its bid was correct.

The bids submitted by C.W.R. and White, White's "corrected" bidding schedule, and the government estimate are as follows:

^{1/} Award has been withheld pending our decision in this matter.

<u>Base Item</u>	<u>C.W.R.</u>	<u>White (Original)</u>	<u>White (Corrected)</u>	<u>Government Estimate</u>
1	\$559,006	\$247,821	\$544,995	\$724,155
2	485,093	150,000	533,399	625,046
3	741,796	70,000	701,536	803,534
4	460,473	1,000,000	446,432	558,007
5	54,653	50,000	63,776	61,338
6	353,492	50,000	226,115	281,313
7	477,315	1,500,000	400,050	478,263
8	130,646	50,000	104,361	84,651
9	180,467	150,000	260,902	356,069
10	18,254	150,000	23,192	19,341
11	2,328,088	2,380,000	2,493,063	4,072,769
<u>Subtotal</u>	\$5,789,283	\$5,797,821	\$5,797,821	\$8,064,486
<u>Additive No. 1</u>	\$43,964	\$35,800	\$35,800	\$140,814
<u>Additive No. 2</u>	\$37,615	\$8,346	\$8,346	\$463,343
<u>Total</u>	\$5,870,862	\$5,841,967	\$5,841,967	\$8,628,643

C.W.R. argues that the corrected bidding schedule submitted by White after bid opening evidences a mistake in White's total base bid that affects its low bidder status and raises a serious doubt as to White's actual intended total base bid. C.W.R. argues that under these circumstances, acceptance of White's bid would be unfair or prejudicial to the other bidders, and that the bid therefore must be rejected.

The Army asserts that White never alleged any mistake in its bid, and that if any error was made, it was simply a judgmental error and not the type of mistake that would require rejection of a bid. The agency cites the general rule that

a bidder bears the responsibility for the submission of its bid, including ascertaining the exact cost of any supplies to be obtained from a supplier. Where the bidder knows it lacks a firm price from its suppliers but elects to submit a bid based on its own estimate, the bidder must bear the risk that the actual suppliers' cost will be higher than the bidder's estimate. Handy Tool & Mfg. Co., 60 Comp. Gen. 189 (1981), 81-1 CPD ¶ 27. We have held that if a bidder's judgment in this regard proves to be erroneous, relief is not available under the mistake in bid rules. Id.

C.W.R. argues that even though relief may not be available for a judgmental error, this does not absolve the agency from the responsibility to reject a bid containing such an obvious error where accepting the bid would be unfair to other bidders. Citing our decision in Panoramic Studios, B-200664, Aug. 17, 1981, 81-2 CPD ¶ 144, C.W.R. argues that bid rejection was required here to protect the integrity of the procurement system.

In Panoramic Studios, a bidder was asked to verify its bid because it was significantly lower than the other bids and the government estimate. The bidder responded by stating that there was a "minor discrepancy in transcribing the [unit] price" which should be \$4,005 rather than the \$3,814.50 unit amount actually bid. The agency determined that the bid could not be either corrected or accepted because a mistake had been alleged but the worksheets submitted to substantiate the mistake were inadequate. We upheld the agency's rejection of the bid despite the bidder's subsequently expressed desire to stand by its original price. We stated that acceptance of the bid would have been prejudicial to the other bidders since the protester did not deny that a mistake had been made but had failed to submit probative evidence indicating the nature of the mistake made or that the bid as actually intended would have been low.

We find that Panoramic Studios is distinguishable, as are similar decisions relied on by the protester such as Prince Construction Co., 63 Comp. Gen. 200 (1984), 84-1 CPD ¶ 159, and H. Martin Construction Co., B-201352, Apr. 8, 1981, 81-1 CPD ¶ 268. In all of these cases, bids were rejected because a bidder alleged, or its conduct evidenced, that it had submitted a bid it did not intend. See G.T. Murphy, Inc., B-209351, Feb. 23, 1982, 82-1 CPD ¶ 161. In Panoramic Studios, for example, the bidder alleged that it had made an error in transcribing its unit prices. In Prince Construction, the bidder verified its bid in writing but told

the contracting officer in conversation that it had made an error of approximately \$10,000 in a portion of its bid. In H. Martin, the bidder also verified its bid in writing, but in a prior conversation, told the agency that a telegram modifying its bid should have increased rather than reduced an item price by \$13,000.

Here, however, White has never alleged that the original prices it bid were not the prices it intended to bid. Rather, it has simply indicated that it made a knowing judgment to submit a bid based on its own estimates of its subcontractor costs. The fact that its judgments may have been erroneous therefore does not require rejection of the bid, as there simply was no actual mistake made at the time of bid submission.^{2/}

Similarly, we find no merit to C.W.R.'s contention that the agency was required to request that White furnish evidence to support its claim that it made an error in its bidding schedule. As the agency points out, the purpose for requiring that such evidence be furnished is to substantiate the nature of the mistake and that the bid actually intended would remain low. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(g)(2) (1985). Where the only error alleged by a bidder is a judgmental error, there is no actual mistake to be substantiated and therefore no requirement that supporting documentation be submitted.

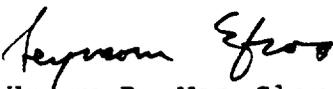
Although C.W.R. asserts that, in view of the discrepancies between White's bid and those of the other bidders and the government estimate, White should have been required to submit documentation that the error in fact was a judgmental one, we disagree. A contracting officer may request such information, but there is no requirement in the FAR, or otherwise, that he do so. Cf., K & P Inc. et al., B-212263 et al., Oct. 11, 1983, 83-2 CPD ¶ 436 (where we stated that a contracting officer may request substantiation that a bid as confirmed is without error).

^{2/} Of course, if the actual prices bid were such that an award to White would result in the government obviously getting something for nothing, it would be unconscionable for the government to accept the bid. See Handy Tool & Mfg. Co., 60 Comp. Gen. 189, supra. Considering the closenesses of White's total bid to the protester's, however, we do not think that there is any basis to find that acceptance of White's bid would be unconscionable.

C.W.R. also argues that White's bid must be rejected because the firm's price of \$8,346 for additive No. 2 was obviously mistaken in view of the substantially higher bid prices for this item submitted by the other bidders (\$37,615 by C.W.R., for example) and in light of the government estimate of \$63,343. In further support of this contention, C.W.R. alleges that its vice-president learned in a phone conversation with White's estimator that there in fact had been a mistake made in the bid for this item; specifically, the estimator left out the cost of all of the concrete needed to perform the work. The protester asserts that under these circumstances, White obviously made an error in its bid for additive No. 2, and despite White's verification of its bid for the item, the bid must be rejected. See H. Martin Construction Co., B-201352, supra.

We do not agree, however, that White's bid for additive No. 2 contains an obvious error. White has never alleged any error in this bid item, nor did its corrected bidding schedule affect or attempt to correct this item. Further, the alleged statements of White's estimator to C.W.R. are not sufficient, in our view, to evidence such an error in the face of White's verification of its bid to the agency. In this connection, we note that White verified its bid after the contracting officer specifically pointed out to White the discrepancy between White's bid, the next low bid, and the government estimate. Under these circumstances, we believe the agency reasonably relied on the verification despite the price discrepancy. See G.T. Murphy, Inc., B-209351, supra. The mere fact that White may have bid low or below cost is no basis to preclude the award. Id.

The protest is denied.^{3/}

for 
Harry R. Van Cleve
General Counsel

^{3/} C.W.R.'s original protest to our Office discussed the possibility that White's bid was materially unbalanced. The agency responded to this argument in its report and contended that the bid was not materially unbalanced. In its comments on the agency report, C.W.R. specifically stated that it is not arguing that the bid should be rejected because it is unbalanced. The protester reiterated that its position is simply that the corrected bidding schedule submitted by White after bid opening evidenced a mistake in White's total base bid. Accordingly, we do not address C.W.R.'s earlier comments concerning unbalanced bidding.