



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.C.K. Contracting Co., Inc.

File: B-224538

Date: January 9, 1987

DIGEST

Correction of low bidder's mistake is appropriate where record clearly establishes the claimed mistake and where the corrected bid is significantly lower than the next low bid despite the fact the low bidder's actual profit markup in calculating its initial bid differed from the markup set forth in its bid worksheets since the range of uncertainty of the intended bid falls within the narrow range of uncertainty for which correction is permitted.

DECISION

J.C.K. Contracting Co., Inc. (JCK), protests the Department of the Navy's decision to permit Carob Contractors, Inc. (Carob), to correct a mistake in its low bid under invitation for bids (IFB) No. N62477-85-B-0320. The IFB was issued to obtain housing repairs and site work at the U.S. Naval Academy, Annapolis, Maryland.

We deny the protest.

The Navy received three bids at bid opening. The low bidder claimed a mistake and was permitted to withdraw its bid. Carob was next in line with a bid of \$2,650,650 and JCK's bid was for \$3,958,000. Shortly after bid opening, the Navy requested Carob to verify its bid. By letter dated September 10, Carob advised the Navy that it had mistakenly failed to multiply its estimated costs for carpentry per unit by the 84 units covered by the IFB. Carob multiplied the total number of units by the per unit cost to arrive at an error of \$260,094 in cost. After including a 25-percent markup for labor, 7 percent for profit and the appropriate sales tax, the total correction sought by Carob equaled \$322,516.

The Navy reviewed the bid worksheets provided by Carob and concluded that there was clear and convincing evidence of the existence of the claimed mistake. Since Carob's initial bid had included the cost of carpentry for one unit, the Navy

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multiplied Carob's estimated cost per unit by 83 rather than 84. In addition, the Navy utilized a labor burden of 26 percent and a profit margin of 7.6 percent because these were the exact markups for labor and profit utilized by Carob in its initial bid. The Navy permitted Carob to increase its bid price by \$321,824.13 for a total bid of \$2,972,574.13.

JCK argues that Carob's intended bid cannot be clearly established so as to permit correction of the mistake. JCK contends that Carob rounded off its initial bid to some extent and that it is unclear to what extent it would have rounded off its corrected bid price. JCK argues that since the exact amount of Carob's intended bid cannot be established, Carob's request for correction should be denied.

Our review of the record clearly shows that Carob failed to multiply its estimated carpentry cost per unit by the total number of units. However, 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 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-218610.2, 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. Dept. of Interior--Mistake in Bid Claim, B-222681, July 23, 1986, 86-2 CPD ¶ 98. 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.

In this case, we find that the correction of Carob's bid 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. Carob's estimated cost per unit, the applicable sales tax and the labor burden of 26 percent is clearly set forth in the worksheets provided and were the figures actually used by Carob in calculating its bid price. In calculating profit, Carob's worksheets show a 7-percent markup but the actual bid price submitted, due apparently to rounding, reflects a markup of 7.6 percent. The overall amount of the error on which profit is to be added equals \$299,186, and applying the two profit markups results in totals of \$320,129.02 (7 percent) and \$321,924.3 (7.6 percent) as the overall amounts for correction. The difference of \$1,795.11 establishes a price range from \$2,970,779.02 to \$2,972,574.13 in which Carob's intended bid price conceivably could have fallen. Carob's bid is still approximately 25 percent less than JCK's and the range of uncertainty (approximately .06 percent of Carob's total bid) is clearly within the narrow range of uncertainty for which correction is permissible. See Dadson Corp., B-210413, June 7, 1983, 83-1 CPD ¶ 618. Since the bid may be corrected only to the bottom of the range of uncertainty, correction should be limited to \$320,129.02 reflecting an overall price of \$2,970,779.02.

The protest is denied.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel