



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Conner Brothers Construction Co., Inc.  
File: B-228232.2  
Date: February 3, 1988

### DIGEST

The General Accounting Office will not question procuring agency's denial of bidder's request to correct a mistake in its bid where correction would require recalculation of the bid (based on a different subcontractor's price) and the corrected bid would be less than one percent below the next low bid.

### DECISION

Conner Brothers Construction Co., Inc., protests 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. DACA21-87-B-0111 issued by the Savannah (Georgia) District of the Corps for construction of a centralized vehicle wash facility at Fort Benning, Georgia. Notwithstanding the alleged mistake, Conner was awarded the contract at its uncorrected bid price of \$6,877,131. The parties agreed, however, that Conner could present its claim for bid correction to our Office for resolution. Specifically, Conner requests correction of its bid under the applicable standards for mistakes disclosed before award.

We deny the protest.

The solicitation called for bids on 12 base bid items and 4 additives to be awarded to the extent funding was available. The Corps received the following four bids and determined that funds were available for all the additives under the low bid submitted by Conner:

Conner Bros. Constr. Co.	\$6,877,131.00
ACC Construction Co.	7,109,015.48
Wright Associates, Inc.	7,166,962.88
Goodner Constr. Co.	7,463,490.00
(Government Estimate	7,122,379.95)

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The Base Bid and Additives I, III and IV each included bid items for Roller Compacted Concrete (RCC) work. All four bidders apparently relied on quotes from the same subcontractor, Ernst Paving Incorporated, in preparing this portion of their bids. The day after bids were opened, Ernst informed the Corps that it had discovered an error in the price it had quoted to the prime contractors. Ernst alleged that it had omitted from its quotation the cost of cement and pozzolan, having "misunderstood the unit price structure of the bid form." Conner then contacted the agency and requested to correct the mistake in its bid resulting from this error by the subcontractor.

Conner submitted its worksheets as well as back-up data from Ernst to demonstrate its bidding error and the amount of the requested correction. The protester explained that it had received quotations from two other subcontractors for the RCC work, and that Ernst's bid would not have been the lowest among them if Ernst had included the cost of cement and pozzolan as required. Conner alleged further, that it had already determined which subcontractor to use for the RCC work when it received Ernst's low quotations at the last minute. The protester claims in this connection that one of two potential subcontractors, APAC and Intertec, was to be used, depending on the scope of work for which the contract was awarded. If the Corps awarded the contract for the base bid and all four additives--as it did--Conner's worksheets indicate that Intertec's quote was lowest and allegedly would have been used in calculating Conner's bid. Thus, Conner alleges that its worksheets show which subcontractor it had intended to use, and at what price, had it not later received Ernst's lower (erroneous) price.

Conner therefore seeks to correct its bid to reflect the lowest price it received for the RCC work, i.e., Intertec's bid amount, rather than adjusting its bid by the amount of Ernst's actual error. Conner's request is to increase its bid by the difference between the price quoted by Ernst and the price quoted by Intertec, \$153,676, plus Conner's mark-up of 6 percent for overhead, profit and additional bond cost, for a total of \$162,896 for the base bid and all additive items. If added to Conner's original bid, the corrected bid would be \$7,040,027. This brings Conner's total bid price within 0.98 percent of the next low bid of \$7,109,015.48.

The initial issue presented is whether, having demonstrated that an error was made by the subcontractor, the prime may allege an error in its bid on the basis of the subcontractor's mistake and correct its bid by an amount other

than the amount of the subcontractor's mistake-- specifically, to correct its bid to the amount it "would have bid" (but for the subcontractor's mistake), using the next low subcontractor's price.

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 § 14.406-3(a).

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 Engineering, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, aff'd, Roebbelen Engineering, 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-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 edge of uncertainty and remain low after correction. Id. 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. Id.; Sam Gonzales Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125. When the requested correction would bring the low bid within 1 percent of the next low bid, there can be almost no uncertainty in proving the amount of the intended bid. Aleutian Constructors, B-215111, July 12, 1984, 84-2 CPD ¶ 44.

The Corps does not dispute that Conner's bid contained an error as a result of Ernst's omission. However, the agency denied Conner's request for bid correction because it found that Conner had not shown clear and convincing evidence of its intended bid. The agency found that Conner's worksheets and affidavits did not sufficiently explain why certain costs were added to and deducted from Ernst's quotes, but similar calculations were not made to adjust the quotes from APAC and Intertec. Specifically, Conner indicated that it

took Ernst's telephoned quotes, subtracted a percentage for bonding costs that Ernst had included in its price and then added other costs for engineering, fine grading and testing in order to arrive at Ernst's unit prices. The unit prices that Conner alleges it would have used if it hadn't used Ernst's erroneous quote were not adjusted in this way. The Corps concluded from this unexplained discrepancy that Conner's worksheets and affidavits did not provide the level of proof required to allow correction where the requested adjustment would bring the protester's bid price to within 1 percent of the next low bid.

We agree that the standard of proof required in this solicitation is extremely high. The adjustment Conner has requested would bring its bid within 0.98 percent of the next low bidder. Conner argues, in this connection, that since all four of the prime contractors bidding in this case relied on the same subcontractor's erroneous quote, all four bids would require approximately the same adjustment. Conner asserts, therefore, that the proximity of the bids as submitted should not be considered in the same light as it would ordinarily, reasoning that the relative standing of the bidders would not change with the requested correction.

This argument is at best speculative. We do not know what other subcontractor's quotes the other bidders had, nor can we say with any certainty whether the other bidders would have sought correction of Ernst's error in their bids. In this regard, another bidder has stated that it was aware of a possible mistake in Ernst's bid and compensated for that error in its bid. Therefore, we think it is necessary to compare Conner's bid with the next low bid.

Conner has argued that its workpapers and affidavits provide objective proof of its intended bid. Conner relies particularly on its "Quotation Receiving Sheet," which it allegedly used to "recap all quotes for various work items for evaluation purposes to decide what to use in [its] own bid," and on a memorandum comparing subcontractor prices for the base bid and each of the possible additives. However, this entire argument presumes that Conner could be allowed to recalculate its bid after Ernst's error was discovered to reflect a price that was never intended to be included in the bid Conner originally submitted. If allowed to substitute the next low subcontractor's price, Conner would be exercising the additional business discretion required to complete the bid, after other bids had been exposed. Conner relies on our decision in Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369, in its argument that correction may be allowed even where the intended bid must be recalculated. However, in Vrooman, the allegedly intended bid which represented the top of the (narrow) range

of uncertainty, was more that 6 percent less than the next low bid. In Roebbelen Engineering, Inc., B-219929, supra, we made it clear that such recalculations can only be permitted in rare circumstances where the intended bid falls within a narrow range of uncertainty significantly below the next low bid.

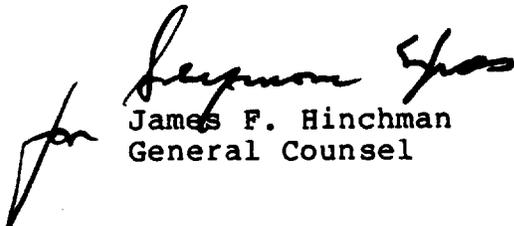
Here, the uncertainty involved in determining which subcontractor Conner "would have used," and at what price, prevents Conner from meeting the stringent requirement of "clear and convincing evidence" dictated by the close proximity in bid prices. In addition, we do not share Conner's opinion that "the objective evidence shows exactly what Conner's bid was in this case prior to receipt and use of the mistaken Ernst bid." The discrepancies cited by the Corps (particularly the uncertainty that subcontract bids were based on the same factors and scope of work), the practice in certain areas of the worksheets of applying a 6 percent markup factor to its costs and a 6.5 percent factor at other times, the calculations converting unit prices to extended prices (and back again to unit prices) and the rounding of the figures at various stages, all contribute uncertainty to the record as to Conner's intended bid. The internal memorandum cited by Conner as listing exactly which prices to use in the absence of Ernst's bid does not provide figures that correspond precisely with the revised bid Conner submitted to the Corps, in the sense that the listed figures could substitute directly for the mistaken prices submitted with Conner's original bid. While there may be a simple explanation for this discrepancy, it refutes to some extent Conner's assertions that the proof "could not be more clear."

We note that the difference in price between Conner's correction request and the next low bidder is \$68,988. Our analysis indicates that if we apply the one half of 1 percent markup to this price difference and take into consideration the rounding off of various figures, but particularly the rounding off of the total base bid by \$24,000, the difference in price between Conner's adjusted bid and the next low bid becomes even closer (by approximately \$35,000) for a \$6 million contract. This does not take into account that the subcontract quotes do not persuasively show that they reflect the same work. This uncertainty potentially could reduce the price difference significantly further.

In summary, we have generally held that correction of a mistake in bid may not be permitted where the correction

would increase the protester's bid within 1 percent of the next low bid, see e.g. Asphalt Construction, Inc., B-185498, Feb. 9, 1976, 76-1 CPD ¶ 82, and have also held that recalculation of a bid that was never "intended" is not generally permissible, see Roebbelen Engineering, Inc., B-219929, supra; here, Conner is requesting correction in circumstances to which both limitations apply. In this situation, given the extreme closeness of the two bids, we find that the Corps' denial of Conner's correction request was reasonable.

The protest is denied.

  
James F. Hinchman  
General Counsel