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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eutaw Construction Company, Inc.

File: B-230987

Date: July 28, 1988

DIGEST

Where workpapers contain clear and convincing evidence that the low bidder mistakenly failed to multiply the overhead rate for one line item by the number of months the bidder computed were needed to complete that line item, the General Accounting Office will not object to the procuring agency's decision to permit upward correction of the bid.

DECISION

Eutaw Construction Company, Inc., protests a contract award to Meco Builders, Inc., by the Corps of Engineers under invitation for bids (IFB) No. DACW01-87-B-0126. Eutaw contends that the Corps improperly permitted Meco to correct a mistake in its bid and consequently that it is the proper awardee.

We deny the protest.

The IFB requested bids for construction work at the Blue Bluff Recreation Area in Aberdeen, Mississippi. The bidding schedule was divided into 18 line items, and bidders were required to submit a price for each line item and a total bid price. Performance under the contract is to be completed in 15 months.

Five bidders responded to the solicitation, with Meco submitting the low bid of $2,246,637.50 and the protester the second low bid of $2,630,593. Subsequently, however, by letter dated January 18 Meco claimed that it had made a mistake in its bid and requested that it be corrected. Meco explained that in calculating the bid, Meco determined its monthly overhead rate was $17,500 by computing the total amount of overhead to be included in the bid as $262,500 and then dividing this amount by 15 months, the time in which performance was to be completed. Meco then distributed this amount between line items 1 through 7 and 13, based on the percentage of time its work force would spend performing the line item involved. For line item 13, site work, Meco planned to allocate 11 months of overhead for a total of $192,500. In computing its bid, however, Meco failed to multiply $17,500 by 11 and thus included only $17,500 as the total overhead for item 13. Meco thereby allegedly understated its bid by $175,000 (10 months multiplied by $17,500 per month). Meco requested permission to increase the bid by $175,000 to account for the omitted overhead; to support its request, Meco submitted the sheet on which it computed its overhead, and its bid recapitulation sheets. Meco also agreed, however, that it would waive the mistake and complete the work at the original bid price if correction was not allowed.

The contracting officer reviewed the information submitted and concluded that the worksheets substantiated by clear and convincing evidence both the existence of a mistake and the intended bid amount. Based upon this affirmative determination and pursuant to Federal Acquisition Regulation (FAR) § 14.406-3 (FAC 84-37), the contracting officer permitted Meco to increase the bid to $2,421,637.50 by adding $175,000 to the total bid price, to account for the excluded overhead. Since Meco remained the low bidder (by $208,955.50) after correction, Meco received the contract award.

Eutaw contends that Meco did not submit clear and convincing evidence to demonstrate its intended bid. Eutaw notes that in Meco's bid as submitted for line item 13 Meco included overhead equal to 3 percent of cost and profit equal to 10 percent of cost--percentages that Eutaw finds reasonable--but that in Meco's corrected bid overhead becomes 36 percent of the cost of the site work, which Eutaw concludes is not a reasonable rate for that single item and thus casts doubt on Meco's intended bid for item 13. Eutaw also questions Meco's alleged intended bid because, according to Eutaw, when overhead increases, profit also should increase and Meco has not requested that it be permitted to increase its bid to account for additional profit. Eutaw argues that if Meco's profit were increased properly, Meco's bid will no longer be the lowest one received. To reach this conclusion, Eutaw reasons that since Meco is requesting permission to increase its overhead by a multiple of 10, Meco also should increase its computed profit for site work of $53,776 by 10, to $537,760. Eutaw concludes that the increased profit and overhead would result in a new bid total for Meco of $2,959,397.50, which is greater than Eutaw's bid and, thus, leaves Eutaw as the lower bidder.

Under FAR § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Price/CIRI Construction, B-230603, May 25, 1988, 88-1 CPD ¶ 500. The authority to permit correction of bids after bid opening is vested in the procuring agency, and our Office will uphold the agency's decision unless it lacks a reasonable basis. Id.

Here, we find that the Corps' decision to permit Meco to correct its bid was reasonable. First, we think it is clear that Meco intended to include 11 months of overhead for line item 13, but submitted its bid on the basis of 1 month of overhead only. Meco's overhead summary sheet shows that Meco did compute its overhead as $17,500 per month for 15 months of performance. Also, Meco's bid recapitulation sheet shows that Meco in fact allocated its overhead to items 1 though 7 and 13 on the basis of the time Meco expected to spend on each item during the 15-month performance period; intended to state the overhead for item 13 as 11 months at $17,500 per month; and only included $17,500 for the item. In sum, we think the Corps reasonably determined that Meco intended to include $192,500 for its overhead for line item 13.

We also disagree with Eutaw's allegation that if Meco's projected profit were increased along with overhead Meco would not be the low bidder. The Army points out that Meco used an overall profit rate of 12.8 percent of cost plus overhead, although the rate varied from item to item. Our review of Meco's bid for line item 13 shows that in its initial bid Meco included a profit margin of $53,776, which is 9 percent of the cost plus overhead. If we increase Meco's bid by $175,000 to account for the omitted overhead, Meco's new figure for cost plus overhead is $775,633. We think that if any additional profit were considered for purposes of deciding whether Meco's bid would be low under any reasonable scenario, such profit should be calculated not at Eutaw's suggested 10 times the profit actually bid, but rather at 9 percent of $775,633, or $69,807. That calculation yields a bid of $2,437,668.50, which is still lower than Eutaw's bid.1/

Finally, insofar as Eutaw suggests that by failing to request additional profit, Meco has failed to prove its intended bid by clear and convincing evidence, we will permit correction even where the intended bid cannot be determined exactly if the intended bid clearly would fall within a narrow range of uncertainty and would remain low

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1/ We note that using 12.8 percent of the figure would add another $29,500 to the bid.

after correction. Price/CIRI Construction, B-230603, supra. In such circumstances, correction is limited to increasing the contract price to the bottom range of uncertainty. Id. Meco's bid, increased by $175,000 as requested, and without any additional profit, is $2,421,637.50, which is 7.9 percent below Eutaw's bid. If we include profit equal to 9 percent of Meco's new cost plus overhead figure, Meco's bid would be $2,437,668.50, as noted above, which is 7.3 percent lower than Eutaw's bid.2/ We believe this is a sufficiently narrow range of uncertainty to permit correction to the lower end of the range. We therefore think the Corps properly permitted Meco to increase its bid by $175,000.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel

2/ The bid would be 6.2 percent lower using the 12.8 percent profit margin.