



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: American Dredging Company, Inc.

File: B-229991.2

Date: September 15, 1988

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### DIGEST

1. Protester's request for upward correction of its low bid for dredging work is denied where error was attributable to protester's incorrect assumption regarding the capacity of the scows used to tow away the dredged material.
2. Protester's request for correction of error in its low bid attributable to application of incorrect indirect cost markup to dredge is denied where protester has not furnished clear evidence as to its intended markup.

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### DECISION

American Dredging Company, Inc., protests the United States Army Corps of Engineers' denial of its request for correction of two alleged mistakes in the low bid that it submitted in response to invitation for bids (IFB) No. DACW51-88-B-0013. We deny the protest.

The IFB, which was issued on December 17, 1987, requested bids for the dredging of an estimated 5,290,000 cubic yards of material from Kill Van Kull and Newark Bay Channels between Bayonne and Elizabeth, New Jersey. Three firms submitted bids. American Dredging's price of \$15,425,700 was low; Gulf Coast Trailing Company was second low with a bid of \$25,782,100. The government estimate for the project was \$22,698,100. Due to the disparity between American Dredging's bid and both the government estimate and the other bids, the contracting officer requested that American Dredging verify its price. American Dredging responded that it had made two mistakes in its bid and requested that it be permitted to increase its price by \$6,005,471, to \$21,431,171. The Corps denied the request for correction, but concluded that it would be proper to allow American Dredging to withdraw its bid.

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American Dredging explains by way of background that it planned to use two types of dredges in performing the contract work: a hopper dredge, which stores dredged material on board pending disposal, and a bucket dredge, which loads the dredged material into scows for transport to the disposal site. The protester alleges that its first error was based on its incorrect calculation of the capacity of these scows. American Dredging contends that it planned to use two scows, each with a nominal capacity of 4,000 cubic yards (c.y.), to haul the dredged material to the dump site. Its estimator calculated that four scow loads could be towed per day since each round trip to the disposal site takes 6 hours; he therefore multiplied the 4,000 c.y. nominal capacity of the scows by four to determine that a total of 16,000 c.y. of dredged material could be disposed of each day. The estimator further determined that for all areas of the project except one, the daily dredge production rate was less than 16,000 c.y., which meant that the limiting factor on the dredging work was the amount of material that could be dredged and not the amount of material that could be towed away in the scows.

After the Corps of Engineers asked American Dredging to verify its bid, the firm's estimator realized that his use of the 4,000 c.y. figure for scow capacity had been in error and that the actual capacity of the scows was substantially lower. The estimator explains that in accepting the 4,000 c.y. figure at face value, he had mistakenly failed to consider the densities of the different types of dredged materials and the bulking factor for converting place cubic yards to scow cubic yards.<sup>1/</sup> He also failed to factor in the Coast Guard requirement for two feet of freeboard on the scows.<sup>2/</sup> Taking these factors into consideration, he recalculated the capacity of the scows to be 3,011 cubic yards for the heavier materials (i.e. the clays) and 3,580 cubic yards for the lighter materials (i.e. the silts). When these figures were compared with the dredge production rates, it became apparent that scow capacity rather than the amount of material that could be dredged was the limiting factor in three of the work areas. The protester indicates that it would have slowed the dredging rate to adjust for the reduction in scow capacity. It requests that its bid be corrected to allow for an additional 92.8 days to perform

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1/ According to the estimator, the material dredged occupies 70 percent more space when placed in the scow.

2/ Freeboard is the distance between the top of the material in the hold and the top of the side of the scow.



the work. The total amount of the correction requested for this error is \$3,134,127.

The second error alleged by American Dredging involves the application of the wrong indirect cost markup to the hopper dredge. The protester explains that it erroneously included the direct cost of the hopper dredge along with its other direct costs and applied its standard 49.5 percent indirect cost markup to it when it in fact intended to markup the hopper dredge by approximately twice that amount. American Dredging requests that its bid be increased \$2,871,204 to correct for this mistake.

An agency may permit upward correction of a low bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3(a). Whether the evidence of the mistake and the bid intended meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. Northwest Builders, B-228555, Feb. 26, 1988, 67 Comp. Gen. \_\_\_, 88-1 CPD ¶ 200. Here, we find that the Corps' decision not to permit correction of American Dredging's bid was reasonable.

With regard to the protester's first mistake, calculating scow capacity, the Corps declined to permit correction based on its determination that American Dredging had never intended to include in its estimate anything other than the nominal capacity of the scows and that its post-bid opening recomputations reflected a price not intended prior to bid opening. We agree. Although it now appears that American Dredging relied on an incorrect calculation of scow capacity, it is clear that the firm bid precisely the amount it intended to. Where, as here, a bidder discovers after bid opening that it based its bid on a mistaken premise, the bidder may not recalculate its bid to arrive at a bid never intended before bid opening. Central Builders, Inc., B-229744, Feb. 25, 1988, 88-1 CPD ¶ 195.

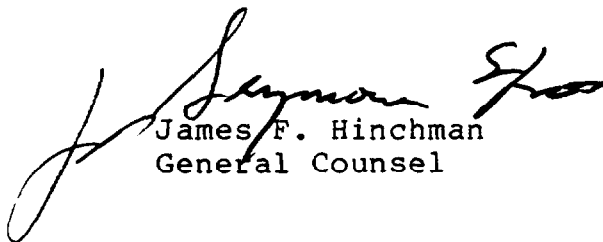
With regard to the protester's second alleged error, calculating indirect costs for the hopper dredge, the agency denied correction since the protester had not provided clear and convincing evidence of its intended markup. The protester's only evidence of its intended markup is a worksheet on which it computed the daily indirect costs for the hopper dredge. There is no indication in this worksheet or any other of whether--or how--American Dredging intended to convert this figure for use in its bid, however. In addition, another worksheet showing the protester's calculation of its total bid includes a lump sum for indirect costs.



While the protester maintains that the lump sum was calculated as a percentage of the direct costs, there is no indication to that effect on the worksheet or any other evidence showing how the lump sum for indirect costs would have been adjusted if the indirect costs for the hopper dredge had been broken out and calculated separately, as the protester states it intended. We therefore agree with the agency that correction of this alleged error should also be denied because there is insufficient evidence of the intended bid.

American Dredging also argues that if it is not permitted to correct its bid the IFB should be canceled and the project resolicited. The protester contends that cancellation would be appropriate since the other bids received were excessive in price. We find this argument to be without merit. The decision to cancel an IFB after bid opening must be supported by a cogent and compelling reason. FAR § 14.404-1(a)(1). Although a cogent and compelling reason exists where the prices of all otherwise acceptable bids are unreasonable, FAR § 14.404-1(c)(6); Nootka Environmental Systems, Inc., B-229837, Apr. 25, 1988, 88-1 CPD ¶ 396, the protester has made no attempt to show, and we see no basis to conclude, that the other bids under the IFB were unreasonable.

The protest is denied.



James F. Hinchman  
General Counsel