



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Oregon Electric Construction, Inc.

**File:** B-232419

**Date:** November 23, 1988

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### **DIGEST**

Procuring agency properly denied protester's request to increase the price of its low bid because of alleged mistake of failing to apply a state use tax where the protester intentionally did not include the tax in computing its bid.

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### **DECISION**

Oregon Electric Construction, Inc. (OEC), protests the denial of its request to correct a mistake in its bid under invitation for bids (IFB) No. DACW57-87-B-0052, issued by the Portland District of the Corps of Engineers. OEC failed to apply a Washington state use tax in computing its bid price and requests that it be permitted to upwardly adjust its price to reflect the tax.

We deny the protest.

The IFB was issued on June 19, 1987, for the installation of government and contractor furnished equipment to operate the specialized control systems at the Dalles-John Day projects which are located on the Columbia River in the states of Washington and Oregon. The IFB advised that bidders would be held responsible for all state, federal, and local taxes and that the contract price should include these taxes. State, federal, and local taxes were defined as all taxes and duties, in effect on the contract date, that the taxing authority is imposing on the transactions or property covered by the contract. The state of Washington imposes a 7 percent use tax on all property, including government furnished property, installed in facilities in Washington.

At bid opening on April 7, OEC submitted the low bid of \$537,709, and the next low bid was \$641,500.

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The government estimate for the work was \$1,037,128. Since OEC's bid price was 51.8 percent of the government estimate and 16.2 percent lower than the next low bid, the Corps requested that OEC verify its bid. On April 15, OEC notified the Corps of a mistake in bid.

OEC advised that in computing its bid it mistakenly failed to include the 7 percent Washington state use tax which it had learned after bid opening would be levied against government furnished property. Therefore, OEC requested the Corps to upwardly adjust its bid by \$36,673, derived by applying the 7 percent factor to the government furnished property listed in the IFB to be installed on the Washington side of the project. Included with this request was an affidavit from the OEC employee who prepared its bid, which indicated that the tax was not included in the bid because there was no reason to believe that the Washington use tax applied to government furnished property.

The Corps denied OEC's request to correct its bid. Federal Acquisition Regulation (FAR) § 14.406-3(a) (FAC 84-32) provides that a bidder may be permitted to correct a bid only if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. The Corps relied on our decisions holding that correction does not extend to situations where the bidder discovers the omission of a factor after bids are opened which was based on a particular judgment that later proved to be unwise or incorrect. See Central Builders, Inc., B-229744, Feb. 25, 1988, 88-1 CPD ¶ 195. The Corps advised OEC that it could either withdraw its bid or accept award at the original bid price.

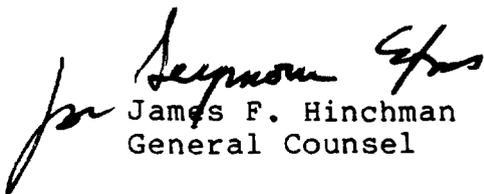
On July 19, 1988, OEC filed a complaint in the United States District Court for the District of Oregon seeking declaratory and injunctive relief. OEC and the Corps subsequently entered into a settlement agreement whereby the Corps permitted OEC to accept award of the contract while reserving the right to have the matter considered by our Office within 10 days of the contract award. The contract was awarded to OEC on August 17.

Whether there is clear and convincing evidence of a mistake and of the intended bid, as required under FAR § 14.406-3(a), in order to permit correction, 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. Correction of a mistake in bid is not permitted where the alleged mistake is based on an incorrect premise

which a bidder discovers after the opening of bids. Central Builders, Inc., B-229744, supra. To allow such a "correction" would impermissibly permit a bidder to recalculate its bid to arrive at a bid never intended before bid opening. American Dredging Co., Inc., B-229991.2, Sept. 15, 1988, 88-2 CPD ¶ 248. While the amount of the tax can be determined by resort to the government furnished property listed in the IFB, there is no evidence that OEC intended to include the use tax in computing its original bid price. On the contrary, the OEC employee who prepared the bid admits that he did not intend to include the tax. Therefore, the Corps properly did not permit OEC to correct its bid.

OEC also suggests that the IFB may have been misleading concerning the requirement to apply the use tax to government furnished property because other government solicitations have included a special clause telling bidders how to apply the Washington use tax to government furnished property. However, the IFB specifically advised that bidders would be responsible for all taxes, and the Corps reports that none of the other bidders made a mistake in this regard, and further that it has never included such a clause in its solicitations. Accordingly, we find that the Corps did not mislead OEC with respect to the bidders tax obligations under the IFB.

The protest is denied.

  
James F. Hinchman  
General Counsel