

H. Kelly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W.R. Hall, Inc.
File: B-237161
Date: January 4, 1990

DIGEST

Low bid was properly corrected to include amount omitted due to an extension error where clear and convincing evidence established both the existence of the mistake and the amount the bidder intended to include in its bid calculations and the bid will remain low by approximately eight percent.

DECISION

W.R. Hall, Inc., protests the determination of the Department of the Navy to permit upward correction of the low bid submitted by Currents General Inc., in response to invitation for bids (IFB) No. N62470-84-B-4163, for the construction of a municipal sewer connection and water mains at the Naval Supply Center, Cheatham Annex, Williamsburg, Virginia. Hall questions the propriety of the bid correction, contending that Currents waited 10 days before discovering its alleged mistake and even then failed to demonstrate any evidence of error on the bid itself.

We deny the protest.

Ten bids were opened at bid opening on August 15, 1989. Currents, with a bid of \$1,644,381, was the apparent low bidder, and Hall, with a bid of \$2,162,640, was the apparent second low bidder. By a letter dated August 15, the Navy requested Currents to verify its bid price within 5 days. In addition, the agency met with Currents on August 24 to confirm that Currents had a complete understanding of the contract requirements and, as a consequence, the agency determined that Currents fully understood the scope of the project. By a letter dated August 25, however, Currents indicated that it had discovered an extension error on its worksheets and, therefore, requested that it be permitted either to correct or to withdraw its bid.

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Some of the piping for this project was to be installed under water. In support of its claim, Currents submitted its original worksheets, including one for "Submarine (Pier Work)." Currents' claimed error occurs on this page, in the extension of its estimated cost for installation of the six-inch forced main piping. The worksheet shows that when Currents multiplied a quantity of 2,871 by \$91 per unit it entered a figure of \$26,126, rather than the correct figure of \$261,261, a difference of \$235,135. This incorrect figure was added to the subtotal for other labor items; was carried forward to the summary sheets; and multiplied by the labor burden, overhead and profit rates which were clearly set out in the worksheets. Had the correct extension of \$261,161 been used, the total bid price would be \$352,703 higher, the amount of the correction requested by Currents.

By a letter dated August 31, Hall filed an agency-level protest contending that Currents: (1) should not be permitted to adjust its bid upward to account for any claimed error, and (2) was unqualified for this project.^{1/} Based on its review of the worksheets and a certified statement from Currents that the worksheets were the original papers and the mistakes and amounts were true and accurate, the Navy granted Currents' request for an upward correction of its bid to \$1,997,090, and awarded the contract to it at that price. Hall challenges the Navy's determination to grant Currents' request for upward correction.

Upward correction of a low bid is permitted when there is clear and convincing evidence to establish not only the existence of a mistake but also the bid amount actually intended. Federal Acquisition Regulation (FAR) § 14.406-3 (FAC 84-37); Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. Whether the evidence 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. Lash Corp., 68 Comp. Gen. 232, supra. In this respect, in considering upward correction of a low bid, we have held that worksheets may constitute clear and convincing evidence if they are in good order, indicate the intended bid price, and there is no contravening evidence. Id.

Our examination of the worksheets reveals no basis upon which to question the Navy's determination that Currents provided clear and convincing evidence that an extension

^{1/} The protester has not pursued the second ground of its agency-level protest.

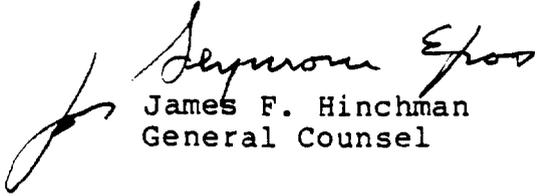
error had been made, and how that affected the price actually bid as opposed to the price intended to be offered. The mistake is clearly demonstrated on the worksheet as an extension error, and the methods of calculating the labor burden and overhead and profit are also clearly indicated in these documents. Since Currents' bid as corrected is still approximately 8 percent below Hall's bid, and approximately 29 percent below the government estimate, we see no reason to disturb the agency's determination.

The protester also notes that Currents did not notify the Navy of its mistake until 10 days after bids were opened, despite the fact that, in its August 15 letter, the agency requested Currents to review and confirm its bid within 5 days.^{2/} Hall argues that if the mistake were merely a clerical error Currents should have been able to detect it within hours of bid opening, and that in this case the amount of time allowed by the government simply provided Currents with ample time to reconsider its competitive position in comparison to the other bidders before seeking "correction" of its bid.

The mistake-in-bid rules are intended to permit relief to bidders who make genuine mistakes in their bids; the paramount concern of the rules, however, is the protection of the competitive bidding system. Eagle Electric, B-228500, Feb. 5, 1988, 88-1 CPD ¶ 116. This is the underlying reason that the rules permit correction of a bid after bid opening only if a high evidentiary standard is met, and then only if the bid as corrected will not come too close to the next low bid. See Panoramic Studios, B-200664, Aug. 17, 1981, 81-2 CPD ¶ 144. Since, as we have held above, this evidentiary standard has been met in this case, we do not find that the integrity of the competitive process has in any way been compromised.

^{2/} The 5-day response period requested by the agency appears to be no more than its own policy to facilitate rapid resolution of questions, and there is no legal basis for this Office to enforce an agency's internal administrative policies. In addition, we note that for our purposes it is not relevant that it took Currents 10 days to discover its mistake, because the FAR does not set arbitrary time limits on the correction of mistakes, except that under the relevant section it must be proven before award. FAR § 14.406-3.

Consequently, the protest is denied, and Hall's claim for reimbursement of the costs of filing and pursuing its protest, including attorney fees, is also denied. Encon Management Inc., B-234679, June 23, 1989, 89-1 CPD ¶ 595.


James F. Hinchman
General Counsel