



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Shoemaker & Alexander, Inc.
File: B-241066
Date: January 15, 1991

Paul G. Dembling, Esq., Laurence Schor, Esq., and Dennis A. Adelson, Esq., Schnader, Harrison, Segal & Lewis, for the protester.
Dennis A. Martin, Esq., for Daniel J. Keating Construction Co. and Joseph D. West, Esq., and Rosemary Maxwell, Esq., Jones, Day, Reavis & Pogue, for Centex-Simpson Construction Co., Inc., interested parties.
Mina Mazaheri, Esq., Federal Bureau of Prisons, Department of Justice, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Upward correction of a mistake in bid resulting from alleged failure to include proper subcontractor costs is permissible where evidence consisting of the bidder's worksheets, the subcontractor's quotations, and an adding machine tape clearly and convincingly demonstrate both the existence of a mistake and the intended bid, and the bid as corrected remained below the next low bid by approximately 3 percent.

DECISION

Shoemaker & Alexander, Inc. protests the preaward determination of the Federal Bureau of Prisons, Department of Justice, to permit upward correction of the low bid submitted by Daniel J. Keating Construction Co. in response to invitation for bids (IFB) No. 100-508-0-CO. Shoemaker contends that correction is improper, that Keating's allegedly mistaken bid should be rejected, and that award should be made to Shoemaker as next in line for award.

We deny the protest.

The solicitation requested lump sum, firm-fixed-price base bids, along with additive alternates, for construction work to be performed at the Federal Correctional Complex in Allenwood, Pennsylvania. Nine bids were received and opened on

August 15, 1990. Keating was the apparent low bidder with a base bid of \$40,400,000, and Shoemaker was the apparent second-low bidder with a base bid of \$43,570,000. Centex-Simpson Construction Co., Inc. offered the next low base bid of \$44,037,000.

Due to the determination of a large price variance between the low and next two low bidders when compared to the variances between other pairs of bidders, the Bureau asked Keating to verify its bid. Keating responded that its bid was understated due to a mistake; in tabulating amounts on its final estimate worksheet it had mistakenly entered the \$2,000,000 site component of the electrical portion of its bid as \$200,000, resulting in a discrepancy of \$1,800,000.^{1/} Keating therefore requested upward correction of its bid in this amount; alternatively, it requested that it be permitted to withdraw its bid. In support of its correction request, Keating submitted its final estimate worksheet, dated August 15, and adding machine tape, along with sworn affidavits to attest to the alleged mistake. The contracting officer found that the evidence clearly and convincingly proved the existence of both the mistake and the intended bid. He therefore concluded that Keating should be allowed to correct its base bid from \$40,400,000 to \$42,200,000, resulting in a total bid price of \$42,265,700, after adjustment for additional bonding and insurance costs on the corrected bid.

On September 10, after the agency denied an agency-level protest by Shoemaker and the filing of this protest with our Office, Keating submitted additional supporting information to the agency, consisting of certified copies of telefaxed electrical work quotations received from subcontractors and worksheets for the electrical portion of its bid. In this submission, Keating further explained how it had arrived at its intended total for the electrical portion of its bid as follows. Before the firm received subcontractors' quotations, it had made a total preliminary estimate of \$5,500,000 for all electrical work based on its prior experience, allocating \$3,500,000 for the buildings work and \$2,000,000 for the site work. Upon receipt of subcontractor quotations for the total electrical work in unexpected higher amounts of from \$6,428,000 to \$6,664,000, upward adjustment of its preliminary total electrical estimate became necessary. Keating adjusted its bid using the highest quotation received, \$6,664,000, with the addition of \$100,000 for a temporary electric pole line,

^{1/} Keating's site electrical work was one component of the entire electrical portion of its bid; the other component was the buildings electrical work. Each component was set forth in separate entries on the firm's final estimate worksheet.

for a total revised electrical estimate of \$6,764,000. In incorporating this increased price in its total electrical work price, Keating adjusted its preliminary estimate by increasing only the buildings component of the electrical work--from \$1,264,000 to \$4,764,000. Adding this amount to the \$2,000,000 that had been allocated for electrical site work, resulted in the firm's \$6,764,000 intended total electrical bid.

On September 12, while Shoemaker's protest was pending, the Bureau determined that urgent and compelling circumstances would not permit awaiting our decision and, on October 9, awarded a contract to Keating at the corrected price.

worksheets further show entries, it added additional fee to the sum. It with a sum of \$4,764,000 and \$2,000,000. While the electrical work bid and electrical bid, Keating added \$200,000 for site electrical work, inadvertently dropped the electrical work on the adding machine tape because of nothing in the record in the manner in which the tabulation caused the total (\$200,000) lower than the estimate sheet, the ar

The record also shows that the bid can be traced to a credit which Keating made for a subcontractor quotation of \$6,646,000 received for the opening. Keating then used the electrical bid determination worksheet in which it preliminarily transposed the total amount of \$6,646,000 to \$6,764,000. From this total, the worksheet then shows that Keating subtracted \$2,000,000 with the notation "site." The resulting sum, \$4,764,000, is shown on the worksheet with the notation "use," apparently indicating the sum to be used for the buildings component of the electrical bid. The sums of \$4,764,000 for buildings-electrical and \$2,000,000 for site-electrical, shown on the bid determination worksheet, are the same as those on Keating's final estimating sheet, for a total electrical bid of \$6,764,000. Again, the worksheets are in good order in that they are entirely consistent with Keating's explanation of its intended bid.

This evidence of Keating's total electrical bid supported by a subcontractor quotation convincingly establishes the firm's intended bid; even without a separate quote establishing the basis for Keating's site electrical work bid, we think Keating's intended bid has been sufficiently established. Keating's failure to develop a detailed breakdown for the site and buildings electrical work may be attributable to the fact that the electrical subcontractor quotations Keating received were for the most part for total electrical work and were not specifically divided into site and building components. Given these circumstances, indicating that Keating treated its electrical bid as a total, the fact that Keating adjusted only

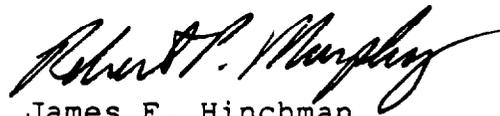
at after Keating totaled the total amounts for bonding, insurance, and other entries include electrical-buildings, and electrical-site with a sum of \$6,764,000. The worksheets thus show a total intended bid of \$6,764,000. Specifically, a \$2,000,000 site adding machine tape indicates only site electrical work. In other words, Keating failed to enter the amount for site electrical work on the adding machine. The worksheets and other records are in good order, and there is no indication that any mistake occurred. This incorrect total should be \$1,800,000 (\$2,000,000 - \$200,000) lower than the total of the entries shown on the estimate sheet if the claimed mistake.

Keating's total electrical bid can be traced to a subcontractor quotation upon which Keating made its calculations. Specifically, the records show a telefax quotation of \$6,646,000 received from a subcontractor on the date of bid opening. Keating then transferred this quotation to its bid determination worksheet as \$6,664,000 (accidentally transposing the third and fourth numerals). The records show that Keating then added \$100,000 to this amount for a pole line, resulting in a total electrical sum of \$6,764,000. From this total, the worksheet then shows that Keating subtracted \$2,000,000 with the notation "site." The resulting sum, \$4,764,000, is shown on the worksheet with the notation "use," apparently indicating the sum to be used for the buildings component of the electrical bid. The sums of \$4,764,000 for buildings-electrical and \$2,000,000 for site-electrical, shown on the bid determination worksheet, are the same as those on Keating's final estimating sheet, for a total electrical bid of \$6,764,000. Again, the worksheets are in good order in that they are entirely consistent with Keating's explanation of its intended bid.

one of its two electrical components when correcting its preliminary estimate upward does not cast significant doubt on the intended bid. There is no dispute that Keating's total electrical bid was sufficient to cover the required work; indeed, Keating's bid cost for the electrical work is virtually identical to Shoemaker's.

Further, it is clear from Keating's final estimating worksheet that Keating's claimed error had an effect on the calculation of the cost of bonding and insurance. Where a bid mistake has a specifically calculable effect on the bid calculation and that effect can be determined by a formula evident from the worksheets, the intended bid may be ascertained by taking into account the effects of the error on other bid calculations, such as bonding and insurance costs, based on the mistaken entry. Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571. Keating has calculated its increased costs on the corrected bid using the same percentage calculations for bonding (.63 percent) and insurance (.58 percent) as it used in preparing its original bid, resulting in a total of \$65,700 in increased costs on the corrected bid. As corrected, Keating's bid is \$1,304,300 lower than Shoemaker's next low bid, a margin of nearly 3 percent. Contrary to the protester's contention, such a margin is not so small as to preclude upward correction. See Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125; G.N. Constr., Inc., B-209641, June 2, 1983, 83-1 CPD ¶ 598. We conclude that upward correction of Keating's bid was appropriate.

The protest is denied.


for James F. Hinchman
General Counsel