



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** F.J. Washington Construction, Inc.

**File:** B-246080

**Date:** February 26, 1992

Howard R. Birnbach, Esq., for the protester.  
Rantik N. Parikh for Arkay Construction Inc., an interested party.  
Lester Edelman, Esq., Department of the Army, for the agency.  
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Agency properly allowed correction of a mistake in bid alleged by the low bidder where the existence of the mistake and the intended bid price were clearly established from the bidder's original bid preparation papers and corrected bid remains significantly below next low bid.
2. General Accounting Office does not review affirmative determinations of responsibility except where the determination was made fraudulently or in bad faith or where definitive responsibility criteria in the solicitation were not met, exceptions not alleged to exist here by the protester.

## DECISION

F.J. Washington Construction, Inc. protests the award made to Arkay Construction, Inc. under invitation for bids (IFB) No. DACA51-91-B-0048, a small disadvantaged business set-aside issued by the Army Corps of Engineers (New York District) for rehabilitation work on the ramps, retaining walls, and bridge section of a building at the United States Military Academy, West Point, New York. Washington contends that Arkay improperly was permitted to correct its bid price, that the original price and corrected price were unreasonably low, and that Arkay is not a responsible bidder. Washington requests that Arkay's contract be terminated and the contract be awarded to Washington.

We deny the protest in part and dismiss it in part.

The IFB, issued on July 24, requested the submission of lump-sum prices for three items and a total price. Item 1 covered all the rehabilitation work on the ramps, retaining walls and bridge section of the building except for the work covered in items 2 and 3. Item 2 covered steel H-piles with protective coating. Item 3 covered two pile load tests. Award was to be made on the basis of the total price for all 3 items. Bids were opened on September 5. Arkay was the low bidder with a total price of \$375,000. After the next two low bids had been rejected as nonresponsive, Washington became the next low bidder with a price of \$723,000. The government estimate for the contract work was \$598,400.

The contracting agency requested Arkay to confirm its bid price. After reviewing its bid, Arkay informed the agency that it had made a mistake in its pricing. The agency, accordingly, requested Arkay to submit its original bid preparation papers and to meet with it to discuss the matter. Arkay provided the papers along with an explanation of how the mistake had occurred. On his estimate sheet, the president of Arkay had divided the contract work into 10 items. Since subcontractors' quotations for 3 of Arkay's 10 items of work (piles and driving, load tests, and excavation for piles, the work covered under IFB items 2 and 3) had not been received, the pricing spaces for these items were left blank on Arkay's estimate sheet, pending the receipt of these quotations. The total price of the seven items Arkay priced, representing item 1 work, was \$375,000 (rounded off).

When a quotation from one subcontractor was received just prior to bid opening, Arkay's president was absent from the Office. Since it was necessary to submit Arkay's bid immediately, another Arkay employee inserted the prices of \$50,000 and \$20,000 (representing the prices in the subcontractor's quotation plus a markup) on the bid schedule for IFB items 2 and 3, respectively. However, the person who inserted these prices apparently believed that the \$375,000 on the Arkay estimate sheet, which only was the total of item 1 work, had been intended to be the total bid price rather than the cost of all the work other than IFB items 2 and 3, and deducted the \$50,000 and \$20,000 figures for items 2 and 3 from the \$375,000 with the result that a price of \$305,000 was bid on item 1. Thus, the total price of Arkay's bid showed \$375,000 consisting of \$305,000 for item 1, \$50,000 for item 2, and \$20,000 for item 3.

After reviewing the documentation submitted by Arkay, the contracting agency concluded that the existence of the mistake, the erroneous deduction of \$70,000 from item 1 and the intended bid price of \$445,000, (\$375,000 plus \$70,000) had been clearly established. Award was made to Arkay on September 30 in the corrected amount of \$445,000.

Washington maintains that the agency, in essence, improperly gave Arkay a chance to submit a second bid. It also argues that because Arkay's bid bond was in the amount of \$80,000, which was consistent with the price Arkay bid, no mistake was made.

Mistakes in a bid generally do not render the bid unacceptable if the errors are correctable under the Federal Acquisition Regulation (FAR) § 14.406 mistake in bid procedures. Jettison Contractors, Inc., B-242792, June 5, 1991, 91-1 CPD ¶ 532. Correction is proper where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, and the corrected bid does not displace other bidders. FAR § 14.406-3(a). Original worksheets can be used as evidence to establish the existence of the mistake and the intended bid price if they are in good order and there is no contravening evidence. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120.

We find that the agency properly allowed Arkay to correct its bid price. The bidder's original bid preparation papers clearly show that a mistake occurred. The estimate sheet shows pricing for work under item 1 and a total price of \$375,000 for this work. Thus, it is clear from this document that the bidder's price for IFB item 1 was intended to be \$375,000. The bid contains the prices for items 2 and 3, totalling \$70,000, which are also shown in the bid preparation papers. When the prices for items 2 and 3 are added to the corrected item 1 figure of \$375,000, the bidder's total price is \$445,000. The \$80,000 sum shown on Arkay's bid bond was merely consistent with the mistaken price bid and in no way establishes or even suggests, in view of the other evidence in the record, that a mistake did not occur in the pricing of Arkay's bid.

Washington also alleges that Arkay is not a responsible bidder because it cannot perform at the low price it bid, its company consists of two employees, it has not done this type of work before, and the firm has a lawsuit pending against it. An affirmative determination, as was made here, that a bidder is capable of performing a contract is based in large measure on judgment. Thus, our Office does not review such affirmative determinations of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

4 C.F.R. § 21.3(m)(5) (1991); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Washington has not alleged that the determination was made fraudulently or in bad faith or that it involved the application of definitive responsibility criteria.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel