



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Red Samm Construction, Inc.
File: B-250891; B-250891.2
Date: February 25, 1993

Richard L. Lambe, Esq., Ulin & Lambe, for the protester.
Timothy A. Chenault, Esq., Coast Guard, Department of
Transportation, for the agency.
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of the General Counsel, GAO, participated in the preparation
of this decision.

DIGEST

General Accounting Office will not disturb contracting agency's determination that low bidder had presented clear and convincing evidence permitting correction of an alleged mistake in bid where the agency's determination is supported by information contained in the bidder's detailed workpapers.

DECISION

Red Samm Construction, Inc. protests the proposed award of a contract to Gaston and Associates, Inc. (G&A) as the low bidder under invitation for bids (IFB) DTCG50-92-B-643D28, issued by the Coast Guard for the construction of a swimming pool addition to the recreation center building at the Coast Guard Support Center, Kodiak, Alaska. The protester argues that the Coast Guard improperly allowed an upward correction in G&A's bid price because the evidence submitted in support of the firm's claimed mistake in bid was not clear and convincing.

We deny the protest.

Seven bids were opened on August 12, 1992, and the total prices ranged from G&A's low bid of \$4,120,950 to a high bid of \$5,800,000. The government estimate was \$4,084,495; Red Samm's second low bid of \$4,533,000 was \$412,050 above G&A's. Two days after bid opening, G&A notified the Coast Guard that its bid contained an error. G&A asserted that in calculating its bid it deducted \$145,000 when it should have added \$188,000 resulting in a bid that was \$333,000 too low. The corrected total, \$4,453,950, would remain lower than the protester's bid by \$79,050.

In support of its request for correction, G&A has submitted certified statements as to how the alleged error occurred and the original materials used in the calculation of its bid. The documents in the record consist of 25 estimate sheets, 4 spread sheets (summary sheets), approximately 8 feet of adding machine tape, and 2 subcontractor quotations.

Red Samm protested to the Coast Guard against any upward correction of G&A's bid. After considering the evidence before it, the Coast Guard permitted the \$333,000 upward correction requested and denied Red Samm's protest. Red Samm then filed a protest with our Office. Award of a contract has been withheld pending our resolution of Red Samm's protest.

In its protest, Red Samm contends that G&A's request for correction is not supported by clear and convincing evidence. In particular, Red Samm argues that G&A has failed to account for \$120,000 in increased subcontractor costs associated with the alleged mistake. In addition, the protester argues that any adjustment of G&A's corrected bid should include markup of \$31,710. It derives this figure by applying G&A's stated markup of 7 percent--the accuracy of which it disputes--to \$453,000, which is the sum of the \$333,000 mathematical error plus the \$120,000 which Red Samm contends is unaccounted for. If a total of \$151,710 (\$31,710 + \$120,000) is added to the \$333,000 correction already made, G&A's bid would exceed the protester's by \$64,660.

A bidder who seeks upward correction of its bid prior to award must submit clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended price. The exact amount of the intended bid need not be established, provided that there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606. Since the procuring agency has the authority to correct such mistakes, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless there is no reasonable basis for it. Tri-State Consultants, B-250700, Dec. 22, 1992, 92-2 CPD ¶ 433. Workpapers may constitute clear and convincing evidence if they demonstrate the existence of a mistake and the intended bid and are in good order and are not contradicted by other evidence. Interstate Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86. The Coast Guard's position is that the existence of the \$333,000 mistake is clear; that there is no \$120,000 unaccounted for; and that the amount of markup to be applied

is within a narrow range of uncertainty which when at its upward limit would not result in G&A's bid exceeding the protester's bid.

The IFB Schedule required bidders to enter lump-sum prices for the work except for some rock blasting and removal and asbestos removal items not at issue here. This means that the tasks that are the subject of G&A's mistake in bid claim do not appear as discrete contract line items but are included within its lump-sum price.

The IFB specifications broke the construction work down by type into 16 divisions. G&A's estimating sheets paralleled the major divisions, and their subsections, listed in the specifications. On the sheets, each division and (if applicable) each subsection had listed beneath it an estimated cost for every component of labor, material, equipment rental or subcontract cost which G&A thought necessary to complete the work. Division 9, Finishes, had a number of subsections, among which was section 9815 which included certain painting work. A G&A estimate sheet shows it planned to have this work done by subcontract at a cost G&A estimated at \$37,000.

The totals for each division and subsection were transferred from the estimate sheets to a series of spread sheets (summary sheets) which G&A used to adjust its estimates in light of the subcontractor quotations it received shortly before the bid was to be submitted. The summary sheets have two left-hand columns: one for G&A's own estimate of cost of an element of the work and the other for the value of the actual amount quoted by a subcontractor. The difference between the two amounts is recorded on the right hand side of the sheet as either an addition or subtraction to the company's original estimate in order to arrive at the final bid.

In this case, the error occurred in the calculations relating to specification subsection 9815. In the far left column was entered G&A's estimate of \$37,000; to its right was entered a subcontractor quotation of \$225,000. Since the subcontractor quotation exceeded G&A's estimate by \$188,000, this amount should have appeared in a right-hand column as an "add" adjustment. G&A's controller, who was working with the company president in tabulating the bid, mistakenly read the estimate of "37000" as \$370,000 and therefore entered \$145,000 ($\$370,000 - \$225,000 = \$145,000$) in the "(deduct)" column on the right side of the summary sheet. The combined effect of deducting \$145,000 when \$188,000 was to be added was an error in adjustment of \$333,000.

Red Samm does not dispute that the figures shown on G&A's summary sheet illogically show a \$145,000 deduction when the mathematics would lead one to make a \$188,000 addition. The protester does, however, question whether the \$225,000 figure shown on the summary sheet accurately and fully reflects the subcontractor cost for this portion of the work. Red Samm argues that it does not, creating doubt as to whether G&A has clearly and convincingly shown the amount of its intended bid and that the bid would remain low after correction.

In this regard, Red Samm refers to the initial statement made by G&A's president concerning the circumstances surrounding the final adjustments he made to his price on the day of bid opening. In this statement, G&A's president said that his intended subcontractor for section 9815, Pacific Partition Systems (PPS) called in and asked that an additional \$160,000 be added to its \$225,000 quotation for that section;¹ and because he had used PPS for other sections of the specification as well, he had to reevaluate his numbers for all sections and add \$40,000 to his bid.

The protester acknowledges that a \$40,000 "add" adjustment for painting appears near the foot of G&A's spread sheet for the base bid. It contends, however, that since a \$40,000 adjustment does not fully compensate for a \$160,000 increase, \$120,000 in added costs remains unaccounted for. If this amount is added to G&A's bid, in addition to the \$333,000 error previously described, G&A no longer would be the low bidder.

The Coast Guard obtained a more detailed explanation from G&A as to the adjustments it made when PPS called in its increased quotation. G&A explains that when PPS increased its quoted price by \$160,000 from \$225,000 to \$385,000, G&A decided to switch to a less expensive subcontractor, Klondike Painting & Decorating. Klondike's quotation, the original of which is in the record, was for \$218,150, which G&A rounded down to \$218,000 for its purposes. The figure "218,000" is written above Klondike's figures.

¹Red Samm notes that entered on PPS' quotation for "base bid amount" is "\$190,900," beneath which are three figures totaling \$35,000, beside which appears "\$225,000." The protester suggests that PPS' quotation may have been for \$190,900 rather than \$225,000. Other figures written on PPS' quotation, however, support the \$225,000 figure G&A used on its summary sheet: (1) "225,000" appears again elsewhere on the page; and (2) "\$160,000" and "385,000," which would be consistent with a \$160,000 increase to a \$225,000 quotation.

Klondike's quotation, however, did not cover the same scope of work as had PPS' which necessitated adjustments to other specification sections. PPS' quotation for section 9250 had included some gypsum board work which Klondike's did not. Therefore, G&A added back in three gypsum board-related items which on its original estimate sheets it had estimated at \$44,496. For the same reason, G&A added back in \$3,000 worth of insulation work under another section. These adjustments total \$47,569, a figure which is annotated on both subcontractors' quotations and which appears on the adding machine tape. When this sum is added to Klondike's rounded quote of \$218,000, the total is \$265,569. The difference between \$265,569--which now represented G&A's cost for the work--and PPS' original quote of \$225,000 was \$40,569 which rounded to \$40,000, is the adjustment shown at the foot of G&A's summary sheet. It also appears on the adding machine tape along with other adjustments which were noted near the foot of G&A's bid summary sheet.

The Coast Guard states that since the adjustments which followed PPS' increase in its quoted price are supported by the subcontractors' quotations, and G&A's detailed estimate sheets, bid summary sheets, and adding machine tapes, it considers the evidence clear and convincing.

Red Samm argues that the evidence is not clear and convincing because G&A's account of its use of the Klondike quotation and the adjustments it made based on it are inconsistent with the account it originally provided, which made no mention of Klondike.

We do not find this argument persuasive for two reasons. First, we think the later account, although more detailed, is not necessarily inconsistent with G&A's initial, more general statement that as a result of PPS' increase in its quoted price G&A had to reevaluate its numbers for several specification sections and adjust its price upward by \$40,000. Moreover, the calculations described are documented in the certified workpapers used in preparing its bid.

Based on our review of the evidence, we cannot conclude that the Coast Guard lacked a reasonable basis for its determination to permit correction. The record does not support Red Samm's contention that a "full correction" of the error in section 9815 would entail an additional upward adjustment of \$120,000. Red Samm's argument that G&A's bid would not remain low primarily rests upon the addition of this amount. Moreover, G&A's bid would remain low even if a markup of 7 percent were applied to the \$333,000 error. With regard to markup, the Coast Guard's analysis indicates

that while it may vary slightly because of certain roundings made by G&A, even at the upward limit of uncertainty it would not result in G&A's bid exceeding the protester's.

The protest is denied.

for Seymour E. Hirsch
James F. Hinchman
General Counsel