



Comptroller General
of the United States

1142166

Washington, D.C. 20548

Decision

Matter of: Pacific Components, Inc.

File: B-252585

Date: June 21, 1993

Michael J. Murphy, Esq., and Jerold T. Everard, Esq., Groff & Murphy, for the protester.

Vincent A. Salgado, Esq., Thomas Kiely, Esq., and Karen Davis, Esq., Federal Aviation Administration, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Low bidder who relied on an erroneous subcontractor quotation in calculating its bid may revise its price upward after opening based on the subcontractor's revised quotation where the record clearly establishes that the original quotation was in error and that the bidder's price would remain low even after recomputation using the subcontractor's revised quotation.

2. Correction of a bid is not precluded simply because the corrected total will come within 1 percent of the next low bid where it can be clearly established that a mistake was made and that the intended bid would have been low.

DECISION

Pacific Components, Inc. protests the Federal Aviation Administration's (FAA) decision to permit J.P. Francis & Associates, Inc. to correct its bid under invitation for bids (IFB) No. DTFAl1-93-B-00110 for renovation work at the FAA Air Route Traffic Control Center in Auburn, Washington. The agency permitted J.P. Francis to increase its bid price after determining that in arriving at the original total, J.P. Francis had relied on an erroneous quotation from its electrical subcontractor. The protester contends that J.P. Francis should not have been permitted to recalculate its bid based on the subcontractor's revised quotation.

We deny the protest.

J.P. Francis's bid of \$1,895,000 was the lowest of the 11 received at bid opening on January 26, 1993; Norse, Inc.'s bid of \$1,910,500 and the protester's bid of \$2,122,000 were second and third low, respectively. The day after opening, J.P. Francis contacted the contracting officer and stated that its bid contained an error, which it requested permission to correct. J.P. Francis claimed that in calculating its bid, it had relied on a quotation from its electrical subcontractor of \$596,230, but that less than 5 minutes before the 2:00 p.m. bid opening, the subcontractor had informed it that the quotation was in error and had increased it by \$200,000. According to J.P. Francis, it did not have time to withdraw the bid or correct it prior to bid opening. It therefore requested permission to increase its bid by \$212,000 (\$200,000 burdened by its standard markup on subcontractor quotations of 6 percent) to \$2,107,000. In the event that the contracting officer denied its request for correction, J.P. Francis asked that it be permitted to withdraw the bid.

In support of its request for correction, J.P. Francis submitted a copy of the original quotation from its electrical subcontractor, Lumin Electric, Inc., and a copy of a telefax that Lumin had transmitted to it at 2:02 p.m. on January 26, which confirmed Lumin's telephone call of 1:55 that afternoon revising its quotation to \$796,230. J.P. Francis also furnished a copy of its bid summary, which contained the sum \$596,230 under the subheading "Subcontracts--Electrical," and indicated under the heading "Mark-Ups" that subcontracts had been marked up at a rate of 6 percent. In addition, it furnished a copy of a letter from Lumin to it explaining the error. According to the letter, Lumin had furnished its quotation to a number of general contractors at approximately 1:30 p.m. on the day of bid opening, and had been notified almost immediately by two of them that there appeared to be a mistake in the quotation. In reviewing its estimate and bid summary, Lumin had noted that it had not included any amount for the transfer switches; after discovering the error, it immediately contacted all of the general contractors and increased its price by \$200,000. Lumin further explained that it had arrived at this sum by obtaining a quotation of \$172,000 for the transfer switches from another electrical contractor, to which it had added a markup of 10 percent (or \$17,200) and sales tax of \$14,104; it had then rounded down the total of \$203,304 to \$200,000. Lumin supported its explanation with a copy of its bid summary, which showed that it had not included a quotation for the transfer switches.

After reviewing the evidence submitted by J.P. Francis, the contracting officer concluded that although it was clear that Lumin had erred in its original quotation, there was no clear and convincing evidence as to its intended quotation.

Accordingly, she notified J.P. Francis that it would be permitted to withdraw its bid, but not to correct it.

Upon receipt of the contracting officer's decision, J.P. Francis requested a meeting with agency representatives to further discuss its request for correction. At the meeting, J.P. Francis furnished a copy of a record of a telephone conversation between Lumin and Stoneway Electric, in which Stoneway quoted a price of \$172,000 (plus freight) for the transfer switches, and a copy of a quotation from a supplier to Stoneway. After reviewing this supplemental documentation, the contracting officer determined that clear and convincing evidence demonstrated both the existence of a mistake and the bid actually intended and permitted J.P. Francis to correct its bid from \$1,895,000 to \$2,107,000.

Correction of J.P. Francis's bid resulted in its displacement as low bidder. The contracting officer therefore asked the new apparent low bidder, Norse Inc., to confirm its bid. Norse responded by requesting that its bid also be corrected. According to Norse, it too had relied on a quotation from Lumin in preparing its bid¹ and had been unable to correct the bid to account for the \$200,000 increase that Lumin had informed it of immediately prior to bid opening. Norse stated that it would have used another electrical subcontractor, which had quoted it a price of \$773,850, had it learned of the error in the Lumin quotation earlier. Norse therefore requested that its bid price be corrected to \$2,086,120.² The contracting officer declined to permit the correction since it involved the substitution of one subcontractor for another. Upon notification that it would not be permitted to correct its bid, Norse withdrew its request for correction and confirmed its original bid price. The contracting officer determined that the bidder could not be permitted to confirm a bid price that it had previously alleged to be in error; she therefore refused to permit Norse to confirm its original price. She now proposes to award to J.P. Francis at its corrected price.

¹According to Norse, Lumin quoted it a price of \$598,230 for the electrical work, i.e., \$2,000 more than the price quoted to J.P. Francis.

²Norse derived this total as follows:

Original Bid Price	\$1,910,500
Less Lumin's Original Quotation	<u>598,230</u>
	\$1,312,270
Plus Other Sub's Quotation	<u>773,850</u>
Corrected Bid Price	\$2,086,120

Pacific Components protests the contracting officer's decision to permit J.P. Francis to correct its bid.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred and the intended price. Federal Acquisition Regulation (FAR) § 14.406-3(a). We will not disturb an agency's conclusion as to whether the evidence of the mistake and intended bid meets the clear and convincing standard unless it lacks a reasonable basis. Capitol Contractors, Inc. and Baker Roofing Co., B-248944; B-248944.2, Oct. 22, 1992, 92-2 CPD ¶ 267.

The protester argues first that J.P. Francis should not be permitted to correct its bid to account for the increase in Lumin's quotation because a bidder cannot be permitted to recalculate its bid after opening to include factors that it did not have in mind at the time it submitted its bid. In this regard, Pacific Components contends that Lumin did not intend to include the transfer switches in its original quotation,³ and therefore should not be permitted to change its quotation--and J.P. Francis, in turn, its bid--to include them.

Although a bidder will not be permitted to recalculate its bid after opening to include funding for an item or items that it failed to consider in calculating the original total, see, e.g., J.W. Creech Inc., B-191177, Mar. 8, 1978, 78-1 CPD ¶ 186, the situation is different where the bidder, in computing its bid, relies on the quotation of a subcontractor that unbeknownst to the bidder omits certain items. Where a bidder relies on an erroneous quotation from a subcontractor or supplier in calculating its bid and there is no evidence that it considered quotations from other subcontractors or suppliers, we have permitted the bidder to revise its price based on the subcontractor/supplier's corrected quotation. Finast Metal Prods., Inc., B-179915, May 3, 1974, 74-1 CPD ¶ 224. We have also permitted correction where although other quotations were received, the range of uncertainty as to the intended price was narrow

³As support for its argument that Lumin did not intend to include the transfer switches in its original quotation, Pacific Components cites the following passage from Lumin's letter explaining its error: "these items are usually covered by the switchgear suppliers, however in this instance they evidently decided not to bid the transfer switches because of the way the specifications were written."

and had an upper end lower than the next low bid. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369, aff'd, B-218610.2, Mar. 17, 1986, 86-1 CPD ¶ 257.⁴

Here, J.P. Francis has sought correction based on Lumin's revised quotation, and there is no evidence in the record to suggest that J.P. Francis considered using any electrical subcontractor other than Lumin.⁵ Further, it appears that J.P. Francis was unaware at the time it submitted its bid that Lumin had failed to include the transfer switches in its quotation. Given these circumstances, we think that the agency correctly determined that this was the type of mistake that could be corrected.

The protester argues next that J.P. Francis should have recognized at the point it received Lumin's quotation that the quotation was so much lower than other subcontractor quotations for the same work that it had to be in error. Pacific Components asserts that J.P. Francis deliberately ignored Lumin's obvious mistake to give itself an unfair advantage in the bidding process, and should not be permitted to manipulate the system to its own advantage.

⁴Where, in contrast, other quotations were received and the bidder has sought to substitute one of the alternatives for the erroneous quotation that it relied on in computing its original price, we have denied relief where reliance upon one of the alternatives would have rendered the bid other than low and it could not be established with certainty which alternative quotation the bidder would have used. Roebbelen Eng'g, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, aff'd, B-219929.2, Mar. 31, 1986, 86-1 CPD ¶ 301.

⁵We note in this regard that it is not entirely clear from the record whether J.P. Francis relied on Lumin's quotation in calculating its bid because of some sort of ongoing relationship between the two firms (whereby J.P. Francis always uses Lumin for electrical work) or because Lumin's quotation was low. In the event that J.P. Francis did solicit quotations other than Lumin's for the electrical work and selected Lumin's because it was low, it is possible that the bidder would have relied on a quotation from a subcontractor other than Lumin in calculating its bid had it known of the error in Lumin's price. It can safely be presumed, however, that J.P. Francis would have considered only alternative quotations equal to or less than Lumin's corrected quotation. Thus, Lumin's corrected quotation represents the upper end of any range of uncertainty as to the intended quotation.

We cannot conclude, based on the record in this case, that Lumin's original quotation was so out of line that any reasonable bidder would have recognized it as erroneous. As previously noted, it is not clear that J.P. Francis sought quotations from electrical subcontractors other than Lumin; thus J.P. Francis may not have had other quotations to compare with Lumin's. Furthermore, although the protester and one other general contractor apparently recognized the possibility of an error in Lumin's quotation immediately upon its receipt, a number of other general contractors apparently did not; thus, the record does not establish that the error was readily apparent to all.

Pacific Components argues next that even if correction of J.P. Francis's bid to account for the omission from Lumin's quotation were permissible, proper correction of the bid would render it other than low, or, at the very least, bring it impermissibly close to the next low bid. In this regard, the protester asserts that J.P. Francis's bid should have included not only the standard 6 percent markup with which J.P. Francis burdened all subcontractor quotations, but also:

- a 3.3 percent markup by Lumin on the quotation that it received from Stoneway for the transfer switches, for profit;
- a markup of 1.65 percent by J.P. Francis for its bond; and
- a labor adjustment of 1.30 percent on the \$172,000 worth of additional material to cover installation of the switches.

If all the appropriate markups and adjustments are made, Pacific Components contends, J.P. Francis's corrected bid would total \$2,123,808.26,⁶ an amount in excess of Pacific Components's own bid of \$2,122,000. Even if only the 3.3 percent markup for Lumin's profit and the 1.65 percent

⁶The protester derived this figure as follows:

Stoneway Quote	\$172,495.00
Lumin Overhead (10%)	\$17,250.00
Sales Tax (8.2%)	\$14,104.00
Lumin Profit (3.3%)	\$6,261.59
Lumin Labor Adjust (1.30%)	\$2,242.44
SUBTOTAL LUMIN	\$212,353.02
J.P. Francis Markup (6%)	\$12,741.18
J.P. Francis Bond (1.65%)	\$3,714.05
SUBTOTAL J.P. FRANCIS	\$16,455.24
TOTAL ADD	\$228,808.26
J.P. Francis Original Bid	\$1,895,000.00
Total Impact of Correction	\$228,808.26
J.P. Francis Corrected Bid	\$2,123,808.26

markup for J.P. Francis's bond are added in, the protester adds, the corrected bid would total \$2,121,392.05, a sum only \$600 lower than its own bid.

With regard to the protester's argument that Lumin incorrectly calculated its revised quotation by failing to include in it a markup for profit and an adjustment for the additional labor required to install the switches, we do not think the amount of Lumin's revised quotation is a matter open to debate. Lumin decided on the amount of the quotation and informed bidders of it prior to bid opening, and has not sought to adjust it since then; thus, it is irrelevant whether it took all of its usual markups into account in computing the revised amount.

It does appear from J.P. Francis's workpapers that the bidder calculated its bond expense as a percentage of its total net cost (including subcontracts), however; thus, it appears that the corrected bid should have included an additional \$3,498 (1.65 percent of \$212,000) for the bond. The addition of \$3,498 to J.P. Francis's corrected bid would increase it to \$2,110,498, an amount less than 1 percent lower than Pacific Components's bid.

The fact that an intended bid is very close to the next low bid does not automatically preclude correction, however. Guardian Constr., B-220982, Mar. 6, 1986, 86-1 CPD ¶ 224. Rather, the rule is that the closer an intended bid comes to the next low bid, the more difficult it is to establish the amount of the intended bid, and the more closely we will scrutinize the claim of mistake. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606. Where close scrutiny confirms that a mistake was made and that the intended bid would have been lowest, we have allowed corrections to within as little as .3 percent of the next low bid. Id.

Here, we have closely scrutinized the record and think that it clearly establishes both that J.P. Francis made a mistake in its bid as submitted, and that the bid that it actually intended would have been lowest. Thus, we think that the agency reasonably concluded that it should permit J.P. Francis to correct its bid.

The protest is denied.



James F. Hinchman
General Counsel