



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

Decision

Matter of: B-R Constructors, Inc.--Second
Reconsideration

File: B-250059.3

Date: September 9, 1993

Mark R. Santana, Esq., Jennings, Kepner & Haug, for the requester.

Robert C. Arsenoff, Esq., and C. Douglas McArthur, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Party's request for reconsideration of prior decision recommending termination of its contract and award to the low bidder is denied where the protester expresses disagreement with the decision but fails to show that decision resulted from error of fact or law.

DECISION

B-R Constructors, Inc. requests reconsideration of our decision, JV Contractors, 72 Comp. Gen. 64 (1992), 92-2 CPD ¶ 439, in which we sustained a protest against the rejection of the low bid under invitation for bids (IFB) No. R3-05-92-005, issued by the Department of Agriculture.¹ In our initial decision, we recommended termination of B-R Constructors' contract and an award to JV Contractors.

We deny the request for reconsideration.

On June 22, 1992, the agency issued the solicitation for shaping and surfacing of 0.9 mile of existing road and construction of a 31-unit campground with paved roads and spurs at the Twilight Campground in the Safford, Arizona Ranger District. The schedule provided for a base bid on 39 line items, plus two additive items; the agency instructed bidders to enter a unit price for each item, an estimated price derived by multiplying the unit price by the

¹We denied a prior request for reconsideration because it appeared untimely. B-R Constructors has now established the timeliness of the request.

quantities in the bid schedule, and a total bid, which was the sum of the estimated prices for each line item.

The agency received six bids, the two lowest from JV Contractors, with a total bid of \$465,361.99, and B-R Constructors, with a total bid of \$479,969. The agency found that in many instances, the low bidder's estimated price was inconsistent with its unit price; for the most part, the discrepancies were insignificant and had no effect on the standing of bidders. Under line item No. 306(02), however, the low bidder had provided a unit price of \$4,252.31, which was the same as its estimated price; the discrepancy involved a possible increase of \$212,615.50 in the low bid, if the price of \$4,252.31 were multiplied by the estimated quantity of 51 stations for that line item. Prior to submission of its bid, JV Contractors had crossed out its unit price, initialing the change, and inserted the amount "\$4,252.31," the same as its price for all 51 stations.

The agency advised JV Contractors that its total base bid was apparently low but that it contained some discrepancies and requested the low bidder to verify its bid price. The low bidder advised the agency that it had not retained a copy of its price schedule and asked the agency to identify the line items that were of concern. The agency refused, directing the low bidder to submit a request under the Freedom of Information Act, if it desired information on the specific bid items causing concern.²

Although the low bidder verified its prices as requested, the agency concluded that it could not discern the intended bid price for line item No. 306(02) from the face of the bid. The agency rejected the bid as ambiguous and therefore nonresponsive, and awarded a contract to B-R Constructors as the low, responsive bidder. JV Contractors then filed a protest with our Office.

In deciding questions involving bid corrections which would result in the displacement of a low evaluated bidder, we generally have examined the degree to which the asserted

²Federal Acquisition Regulation (FAR) § 14.406-1 states that where a contracting officer has reason to believe that a mistake may have been made and requests verification of the bid, the contracting officer should call the bidder's attention to the suspected mistake.

correct bid is the only reasonable interpretation. See, e.g., Marine Ways Corp., B-211788, Aug. 29, 1983, 83-2 CPD ¶ 271, aff'd, B-211788.2, Nov. 16, 1983, 83-2 CPD ¶ 574; DaNeal Constr., Inc., B-208469, Dec. 28, 1982, 82-2 CPD ¶ 584. The reasonableness of the interpretation must be ascertained from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic or experience. See, e.g., Northwest Piping, Inc., B-233796, Mar. 30, 1989, 89-1 CPD ¶ 333.

We concluded that notwithstanding the initialed change to JV Contractors' unit price, the only reasonable interpretation of the bid was that the low bidder had intended the price of \$4,252.31 to apply to the estimated price for all 51 stations. Such an interpretation was the only one consistent with the government estimate of \$150 per station and with the other bids received, which ranged from \$95 to \$155.49 for line item No. 306(02); we did not find it reasonable to interpret the bid as offering a unit price of \$4,252.31, which would have been nearly 30 times the agency's estimate for line item No. 306(02). Further, the estimated price of \$4,252.31 for all 51 stations was the only interpretation consistent with JV Contractors' total bid price of \$465,361.99. We therefore sustained the protest.

In its request for reconsideration, B-R Constructors asserts that our decision is incorrect as a matter of law. The bidder argues that we should have applied the rule of R.R. Gregory Corp., B-217251, Apr. 19, 1985, 85-1 CPD ¶ 449, in which we found that where a bidder had crossed out its original bid price and inserted a lower price, it was unreasonable to believe that the bidder intended the original price to control. In that case, we stated that as a general rule, crossing out one price and inserting another with initials indicates an intention to be bound to the inserted price; further, only the lower price was consistent with the awardee's total bid. Here, by contrast, we found that it was unreasonable to believe that JV Constructors intended the price of \$4,252.31 as controlling, since that interpretation was inconsistent with the other aspects of the bid--the estimated price and the total price--as well as with the agency's estimate and the other bids received. B-R Constructors has offered no reasonable alternative interpretation of JV Constructors' bid and has otherwise provided no basis for our concluding that our prior decision was in error as a matter of law.³

³B-R Constructors argues that by not applying the R.R. Gregory Corp. rule, we create mischief in the bidding

(continued...)

B-R Constructors also contends that the low bid contained numerous irregularities, demonstrating the low bidder's inability to comply with the FAR. In our original decision, we noted B-R Constructors' arguments in this regard and concluded that there were no deficiencies in the low bid that might affect the bidder's material obligations under the contract; the agency could therefore waive the irregularities in question as minor informalities. JV Contractors, supra. To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either error of fact or law or information not previously considered that warrants its reversal or modification. 4 C.F.R. § 21.12(a) (1993); Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. B-R Constructors' disagreement with our conclusion that there were no material irregularities in the protester's bid provides no basis for reconsideration.⁴

The request for reconsideration is denied.



for James F. Hinchman
General Counsel

³(...continued)

process by allowing a bidder to make last-minute changes in its bid and later decide whether or not it wishes to escape their effect. Under our decision, however, the bidder is not free to disavow its changes at will but must demonstrate that there is only one rational explanation for its bid.

⁴To the extent that B-R Constructors asserts that JV Contractors is not capable of meeting requirements, its assertions concern the agency's affirmative determination of responsibility, which our Office does not generally review. 4 C.F.R. § 21.3(m) (5).