



Comptroller General
of the United States

43282

Washington, D.C. 20548

Decision

Matter of: R. P. Richards Construction Co.

File: B-258923

Date: February 21, 1995

C. Patrick Stoll, Esq., Herrig & Vogt, for the protester, Barbara J. Fisher, Federal Aviation Administration, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bidder should be allowed to make an upward correction to its bid after opening where the record clearly establishes the claimed mistake and intended bid; that bidder relied on erroneous subcontractor quotation to prepare its bid; and that bidder's price would remain substantially below next low bid even after recomputation based on subcontractor's revised quotation.

DECISION

R. P. Richards Construction Co. protests the Federal Aviation Administration's (FAA) decision, after bid opening but before award, to deny the protester's request to correct a mistake in its bid under invitation for bids (IFB) No. DTFA08-94-B-03333, for the construction of an air traffic control tower and an administrative base building at the Santa Barbara Municipal Airport, California.

We sustain the protest.

BACKGROUND

The IFB required bidders to submit a fixed price for the construction of the tower and administrative building. Of the 61 potential bidders issued the IFB, three firms

submitted bids by the 2 p.m. bid opening time set on September 7, 1994, with the following results:

<u>Bidder</u>	<u>Price</u>
R. P. Richards	\$5,945,000
Merco Construction	6,694,000
HMH Construction	6,784,000

The government's independent estimate for the project was \$6,499,800. In view of the difference between R. P. Richards's low bid and the government estimate (a difference of \$554,800), and in light of the disparity between R. P. Richards's bid and the next low bid (a difference of \$749,000), the contracting officer requested the protester to verify its bid.

The protester responded to the contracting officer's verification request in a September 13 letter, stating that it had identified a mistake in its bid. Specifically, the protester stated that it had learned that due to a typographical error, one of its proposed subcontractors, U. S. Elevator, had made a \$100,000 mistake in the quotation it had submitted to R. P. Richards.

The parties continued to correspond regarding R. P. Richards's correction request and to allow the firm to submit additional information in support of its mistake allegation. R. P. Richards submitted to the agency a price breakdown showing how it had arrived at its total bid price, and copies of correspondence between U. S. Elevator and R. P. Richards regarding the mistake. R. P. Richards also submitted a copy of U. S. Elevator's worksheet and a sworn statement from Mr. John Antona, the company representative responsible for developing U. S. Elevator's quote, explaining how the mistake occurred.

After reviewing the protester's submissions, in a written decision dated September 28, the FAA denied the protester's upward correction request. In that decision, the contracting officer explained that although it appeared that U. S. Elevator had made a mistake in the quotation submitted to R. P. Richards, the protester had not established by clear and convincing evidence its intended bid. The contracting officer advised that R. P. Richards could either request to withdraw its bid or waive its claim of error and agree to perform the contract at its uncorrected price. R. P. Richards requested that the contracting officer reconsider her decision, providing for the first time a copy of the worksheet it used to formulate its original bid. On

October 3, the FAA affirmed its decision denying the correction request. This protest to our Office followed.¹

DISCUSSION

Nature of Mistake

The facts in this case are not in dispute. The protester explains that prior to submitting its bid, it engaged in negotiations with prospective subcontractors for the elevator portion of the work. As a result of those negotiations, on the morning of September 7, bid opening day, U. S. Elevator submitted a written quotation to R. P. Richards stating in part:

"We are pleased to confirm our quotation of \$48,200 (Forty-Eight thousand Two hundred dollars) for the [Santa Barbara Airport Air Traffic Control Tower, Santa Barbara, CA] elevator work."

That statement, along with other terms and conditions of the quote, appears above the signature of "John Antona, Zone Manager," for U. S. Elevator.

In a sworn affidavit submitted to the FAA, the protester's vice president, Mr. Peter N. Richards, states that due to the disparity between U. S. Elevator's quote and the only other quote the firm received for the elevator work (\$153,900),² he suspected that U. S. Elevator might have made a mistake in preparing its quote. Mr. Richards states that at approximately 11:45 a.m. on September 7, he telephoned U. S. Elevator to request that it confirm the quote, but that he was unable to reach Mr. Antona.

¹In a letter to the FAA dated October 3, R. P. Richards stated that the firm was "willing to accept and execute a contract . . . for [\$5,945,000] with the reservation of rights to appeal [the FAA's] final decision. . . ." R. P. Richards then filed this protest with our Office on October 11. The FAA subsequently informed our Office that it had awarded the contract to R. P. Richards at the uncorrected price. The parties have agreed to our review of the matter notwithstanding the award of the contract. See Alliance Properties Inc., 64 Comp. Gen. 330 (1985), 85-1 CPD ¶ 286.

²According to Mr. Richards, that quote was originally \$189,500, but was adjusted downward to \$153,900 by that prospective subcontractor prior to bid opening. Mr. Richards states that had U. S. Elevator not made a mistake in its quote, R. P. Richards would have used the lower of the two quotes (\$148,200) in preparing its bid.

Mr. Antona returned Mr. Richards's telephone call at approximately 1:35 p.m. that same day. Mr. Richards then informed Mr. Antona that U. S. Elevator's quote was substantially lower than that of its competition and requested that U. S. Elevator confirm its price. According to Mr. Richards, Mr. Antona responded that the quoted price was good and that U. S. Elevator would honor its quote as submitted.

Mr. Antona, who also submitted a sworn affidavit to FAA and to our Office, essentially confirms Mr. Richards's statements. Mr. Antona adds that when he returned Mr. Richards's telephone call on September 7, he, Mr. Antona, was attending a meeting at a location away from his office. Apparently not having a copy of the quote submitted in front of him, and believing that U. S. Elevator's quote had, in fact, been submitted to R. P. Richards as \$148,200, Mr. Antona states that he "unwittingly" assured Mr. Richards that the quote was correct. Mr. Antona asserts that the erroneous amount U. S. Elevator quoted (i.e., \$48,200) was never mentioned during the conversation with Mr. Richards, and that it was not until Mr. Antona returned to his office later that day that he discovered that due to a typographical error, U. S. Elevator's quote had been erroneously submitted to R. P. Richards as \$48,200, rather than \$148,200.

At approximately 4:25 p.m., on September 7, Mr. Antona telephoned Mr. Richards to advise him of the mistake. Unable to reach Mr. Richards, Mr. Antona left a message with the receptionist that U. S. Elevator's quote on the project should have been \$148,200. At approximately 4:32 p.m., Mr. Richards received a copy of a revised quotation from U. S. Elevator reflecting the firm's corrected price of \$148,200.³

³The record contains copies of both quotations U. S. Elevator submitted to R. P. Richards on September 7. An imprint across the top of the quote originally submitted (\$48,200) shows that it was faxed on September 7, at 10:51 a.m. The second quote (\$148,200) shows that it was faxed later that same day, at "10:32" or 4:32 p.m., confirming Mr. Richards's statement as to when he received the corrected quote. A comparison of the signatures appearing above the name "John Antona" on those two documents, and on Mr. Antona's affidavit, reveals distinct differences. Specifically, the signature on the document containing the erroneous \$48,200 quote is noticeably different from the signature appearing on the corrected quote and on Mr. Antona's notarized affidavit--the signatures on the latter documents being virtually

(continued...)

Analysis

A bidder's request for upward correction of a bid before award may be granted only where the request is supported by clear and convincing evidence of both the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.406-3(a). Correction based on subcontractors' mistakes is permitted if the standard for correction is otherwise satisfied. See Pacific Components, Inc., B-252585, June 21, 1993, 93-1 CPD ¶ 478; J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43; Department of the Interior--Mistake in Bid Claim, B-222681, July 23, 1986, 86-2 CPD ¶ 98. Worksheets may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence. Interstate Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86.

Since mistake-in-bid relief is based upon a showing that other than the intended bid was submitted, correction generally is not allowed where the bidder seeks to revise the bid to reflect a price other than what the bidder intended. See Handy Tool & Mfg. Co., Inc., 60 Comp. Gen. 189 (1981), 81-1 CPD ¶ 27; 51 Comp. Gen. 18 (1971). Thus, a bidder generally may not obtain correction for even a clearly mistaken bid based on computations or recomputations performed after bid opening to reflect a price that the bidder never intended before bid opening. 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.

One exception to this general rule involves nonjudgmental mistakes made by suppliers and subcontractors. We have recognized that errors made by a bidder's supplier or potential subcontractor are cognizable under the mistake-in-bid procedures even though technically, the bid initially submitted to the contracting agency is what the bidder intended to submit. See, e.g., MKB Mfg. Corp., 59 Comp. Gen. 195 (1980), 80-1 CPD ¶ 34. The rationale for this exception is that at the time the firm submits its bid, the bidder is usually unaware of the underlying error. Correction may thus be proper in certain circumstances on the basis that the subcontractor's error precludes the bidder from making a knowing judgment about its actual

³(...continued)

identical--suggesting that Mr. Antona may not have actually signed the \$48,200 quote. That might explain in part Mr. Antona's statement that when he confirmed U. S. Elevator's quote over the telephone, he did not realize that the original price had been incorrectly submitted as \$48,200.

intended bid. See id.; Robert E. McKee, Inc., B-181872, Nov. 5, 1974, 74-2 CPD ¶ 237 (correction allowed based on correction of the subcontractor's original erroneous quote).

Correction is proper in this case. The record contains a copy of the U. S. Elevator worksheet, which R. P. Richards submitted to the FAA with its correction request, and it appears to be in good order. The worksheet, a standard preprinted form used by U. S. Elevator, clearly identifies the project as consisting of a passenger elevator for the Santa Barbara Airport to be owned by the FAA. The worksheet, dated September 6, 1994, prior to bid opening, contains spaces to price 48 individual line items, each identified by name, a subtotal, total material, taxes, and additional related charges such as travel expenses and freight.

For each line item applicable to the project, the worksheet clearly shows handwritten figures, with each numeral distinctly written next to the applicable line item, and each digit in its own grid box. All of the figures are clearly legible and there is nothing on the worksheet to suggest tampering or alterations to any number. The worksheet's line for total selling price shows the figure \$148,200. However, while each of the numerals 4, 8, 2, 0, and 0 appears in its corresponding grid box, the worksheet does not have a corresponding sixth grid box to accommodate the figure representing the hundred-thousand place (i.e., the worksheet is designed with only 5 grid boxes). Thus, the numeral "1" appears immediately to the left of the grid box containing the numeral "4," and outside any grid box. Given the worksheet's design, it is clear how the individual who prepared the erroneous quote submitted to R. P. Richards could have easily overlooked the "1" and omitted it from U. S. Elevator's quote. Nonetheless, U.S. Elevator's worksheet's line for the total selling price clearly shows U. S. Elevator's intended quote, \$148,200.

The protester's own worksheet, prepared before bid opening and otherwise in good order, shows an entry of \$49,405⁴ under the headings "elevator" and "sub[contractor] amount", with the annotation "U.S. Elevator" alongside. The worksheet further shows that the protester totaled its

⁴The protester explains that it intended to add a 1.25 percent markup for a subcontractor bond to the quote from U.S. Elevator, which, properly calculated, would have totalled \$48,802.50. The protester explains that it arrived at the figure in its worksheet (\$49,405) based on an erroneous calculation, i.e., multiplying the quote by 1.025 instead of 1.0125 ($\$48,200 \times 1.025 = \$49,405$).

direct costs, including the price for elevator work, and to that total added amounts for insurance (1 percent), profit/overhead (6.62 percent), and bonds (1 percent).

The protester's worksheet shows that the protester included the amount of \$53,734 for the elevator work in its original bid.⁵ Calculated based on the revised subcontractor's quote of \$148,200, the price for the elevator work is \$163,202.⁶ In sum, we think the record contains clear and convincing evidence of the mistake by the subcontractor; of the protester's reliance on the mistaken quote; and of the manner in which the protester calculated its bid. Accordingly, we recommend that Richards be permitted to correct its bid upward to account for the difference between its corrected price for the elevator work (\$163,202) and the initial mistaken price (\$53,734),⁷ or \$109,468.

⁵This amount was calculated as follows based on the figures on Richards's pre-bid opening worksheet: \$49,405 + \$194 (1 percent insurance) + \$3,303 (6.62 percent profit/overhead) + \$532 (1 percent bond).

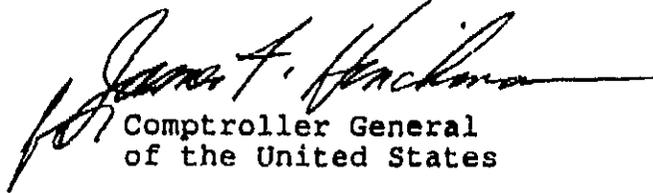
⁶This amount was calculated as follows: \$148,200 + \$1,852 (1.25 percent subcontractor bond) + \$1,501 (1 percent insurance) + \$10,033 (6.62 percent profit/overhead) + \$1,616 (1 percent bond).

⁷The protester requests that its bid be increased by \$115,432. The only evidence in the record of the calculations supporting this figure is a "pricing proposal" included as an attachment to the protester's September 21 letter to the agency. That document indicates that the protester took the difference between the mistaken and corrected subcontractor quotes (\$100,000) and added 1.5 percent for a subcontractor bond, 12.6 percent for overhead and profit, and 1 percent for its own bond. As noted above, the protester's worksheet shows different figures for the subcontractor bond and the overhead and profit, and an additional amount for insurance. Since the worksheet was prepared before bid opening and is otherwise in good order, and the inconsistent "pricing proposal" apparently was prepared after bid opening in connection with the protester's request for correction and is otherwise unsupported in this record, we have used the figures from the worksheet in calculating the amount of correction to be allowed. We note that, even using the figures referenced in the "pricing proposal", the difference between the two amounts is only \$5,964; using either calculation, the protester's bid is still substantially below the next low bid.

RECOMMENDATION

We recommend that the agency allow R. P. Richards an upward correction to its bid in the amount of \$109,468. R. P. Richards is also entitled to recover the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4-C.F.R. § 21.6(d) (1994). R. P. Richards should file its claim, detailing and certifying the time expended and costs incurred, directly with the FAA within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f) (1).

The protest is sustained.



James F. Hackman
Comptroller General
of the United States