

**Matter of:** J.L. Malone & Associates, Inc.; Helix Electric, Inc.

**File:** B-261353; B-261353.2

**Date:** September 18, 1995

---

Joel S. Rubenstein, Esq., Bell, Boyd & Lloyd, for J.L. Malone & Associates, Inc., and Vicki L. Hamilton, Esq., Marks & Golia, for Helix Electric, Inc., the protesters. Leo S. McNamara, Esq., McNamara & Flynn, for The Ryan Co., an interested party. Lester Edelman, Esq., and Danielle Conway-Jones, Esq., Department of the Army, for the agency. Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

#### **DIGEST**

Where the agency reasonably concluded that the low bidder presented clear and convincing evidence of a mistake in its bid and of the intended bid price and the bid is low with or without correction, the agency properly allowed the bidder to correct the mistake and increase its bid price.

---

#### **DECISION**

J.L. Malone & Associates, Inc. and Helix Electric, Inc. protest the U.S. Corps of Engineers's decision to award a contract to The Ryan Co., after first permitting Ryan to correct a mistake allegedly made in its low bid, under invitation for bids (IFB) No. DACA41-95-B-0009, issued for the construction of an exterior electrical distribution system at the Lake City Ammunition Plant, Missouri. Malone also protests the acceptability of Helix's bid.<sup>1</sup>

---

<sup>1</sup>In view of our disposition of the protest regarding Ryan, we need not consider the protest against the acceptability of Helix's bid.

We deny the protest.

The IFB, issued on February 15, 1994, requested, as later amended, lump-sum prices for three items. Item 0001, base schedule, consisted of all work except that included under option items 0002 and 0003. Item 0002 was for backup power for region 10, and item 0003 was for backup power for regions 6 and 10. Six bids were received prior to bid opening.

Ryan submitted the low bid. Helix submitted the next low bid, and Malone submitted the third low bid. Since Ryan's total price of \$8,806,000 was 22 percent below the government estimate, the contracting officer requested Ryan to verify its prices. Ryan then alleged a mistake in its bid and requested permission to correct it. The contracting officer requested Ryan to submit documentation to support its claim of mistake. Ryan forwarded its original bid backup documents and affidavits to prove its mistake, the nature of the mistake, and its intended bid. On the basis of these submissions, Ryan was permitted to correct its base schedule price upward from \$7,542,000 to a total of \$8,520,336 based on the omission of \$845,000 for "site and civil work" from the bid. As corrected, Ryan's bid was still low by \$794,664, or approximately 7.5 percent of the next low bid.

Ryan's bid documents and affidavits explained the mistake as follows: Ryan revised its estimate for the civil and site work required under the solicitation just prior to bid opening. It inserted the revised price into the spread sheet in its computer. In deleting the old price for that work from the "carry" column, it made a data entry error and deleted the function that carried the revised cost in the "price" column over into the column to be added to arrive at the total base bid. Thus, the entire cost for site and civil work was excluded from Ryan's bid when the revised price in the "price" column was not also included in the "carry" column to be totaled by the computer program. The agency determined that the spread sheets submitted by Ryan supported the allegation of mistake because the subcontractor sheet on the base bid showed Ryan as the supplier for site and civil work, the estimate for this work was listed as \$845,000,<sup>2</sup> and the item had been intended for inclusion in the bid price--it had been designated with a

---

<sup>2</sup>The computer price spread sheet on which pricing for the work was itemized showed a total price of \$845,525. Ryan states it rounded this figure down to \$845,000.

1.00 factor, as were all other subtotal categories which had been used to calculate Ryan's total prices for the base schedule and the options. The "carry" column for site work was blank on the spread sheet.

Malone protests the correction of Ryan's bid on the basis that some of the items on Ryan's site and civil work spread sheets are not priced but rather are designated with the words "ROY" or "QUOTE" in the material columns and the word "QUOTE" in the material, labor, and equipment columns which are used for totaling the prices on the pertinent spread sheet pages. Malone argues that while a mistake may have occurred, Ryan's intended price has not been established and the agency should have allowed Ryan to withdraw, but not correct, its bid.

Helix argues that Ryan's mistake was not correctable and that Ryan's bid should have been withdrawn. Helix asserts that Ryan previously has consistently bid below other bidders and the government estimate by large margins, as here, and has never requested permission to correct its bid.

Helix additionally argues that the facts suggest that Ryan had a preconceived plan to increase its bid price after bid opening. Helix believes that logic dictates that when Ryan changed its price for the site and civil work on its computer program the changes would have been limited to the "price" column and there would have been no additional need to delete the old price from the "carry" column. Helix finds it incomprehensible that Ryan would have missed such a mistake in computing its bid since the page on which the site and civil work price is placed reflects the total bid price as well as the page total and thus the "running tally" was constantly visible and a "mistake" of such a magnitude could not have gone unnoticed. Helix notes that the worksheets are undated and thus could have been generated after prices were exposed at bid opening.

An agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation § 14.406-3(a). For an upward correction of a low bid, workpapers may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Fishermen's Boat Shop, Inc., B-252560, July 9, 1993, 93-2 CPD ¶ 11. Correction may be allowed even though the intended bid price cannot be determined exactly, provided 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. McInnis Bros. Constr., Inc., B-251138, Mar. 1, 1993, 93-1 CPD ¶ 186.

As the agency explains, the items for which Malone notes that the spread sheets showed the words "quote" or "Roy" are priced elsewhere in the Ryan spread sheets, and the use of the words "quote" or "Roy" simply identifies the source of the prices, that is, "quote" indicates that the price came from an outside subcontractor or supplier while "Roy" refers to an employee-estimator of the company. Thus, contrary to Malone's argument, the use of these terms provides no basis to question the agency's decision.

Helix's protest also has no merit. There is simply no support in the record for the assertion that Ryan did not intend to price the site and civil work or, as Helix alleges, that its mistake was part of a pattern of bidding low with the intent of seeking correction after bid opening. Ryan's spread sheets showed the omission of this work from the bid total. Although the subcontractor spread sheet for site and civil work showed a total price of \$845,000, Ryan failed to include the \$845,000 on the spread sheet containing subtotal items to be added for the total base bid. The site and civil work subtotal category was marked with a 1.00 factor, and for every category of Ryan's bid where a factor of 1.00 was in the same row as the estimate the subtotals were incorporated into the base bid. On this record, we think the agency reasonably found clear and convincing evidence of the mistake and the intended bid.<sup>3</sup>

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel

---

<sup>3</sup>Helix also argues that computer spread sheets are too easy to generate after bid opening and should not be an acceptable basis to permit correction. The mere fact that bid worksheets were developed by computer does not preclude them from constituting valid evidence to support a request for bid correction. D. L. Draper Assoc., B-213177, Dec. 9, 1983, 83-2 CPD ¶ 662; C Constr. Co., Inc., B-253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198. The key consideration is whether or not the submissions are clear and convincing of the mistake and intended bid. The manipulation of the mistake in bid rules may occur just as easily when a bidder has prepared its worksheets without the use of a computer. It is because of the risk that correction could lead to abuse of the competitive system that correction is permitted only where, as here, a high standard of proof has been met. Southwest Constr. Corp., B-228013, Oct. 8, 1987, 87-2 CPD ¶ 346.