

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-213495

DATE: April 18, 1984

MATTER OF: A & J Construction Co., Inc.

DIGEST:

1. Authority to correct mistakes alleged after bid opening but before award is vested in procuring agencies, and the weight to be given the evidence in support of an asserted mistake is a question of fact. GAO therefore will not disturb an agency's determination concerning correction unless there is no reasonable basis for it.
2. Agency reasonably may rely upon a solicitation clause providing that the unit price will govern in case of a discrepancy between the unit and the extended prices where the bid would be low whether either price were used and it is not clear that it is the unit, rather than the extended, price that is incorrect.

A&J Construction Co., Inc. requests reformation of a contract with the Bureau of Reclamation, Department of the Interior, for furnishing and installing pipe and associated work on the Pick-Sloan Missouri Basin Project in Valley County, Nebraska. The firm accepted award subject to an agreement to submit its mistake in bid claim, raised before award, to our Office.

Three mistakes are involved here: an error in extension of unit prices for two line items; another in addition of unit or extended prices for individual line items; and a third allegedly caused by subtracting the incorrect total for these items from the intended bid price to arrive at a subtotal for the remainder of the more than 200 items.

We agree with the agency's decision to correct the first two mistakes, resulting in a \$7,755 decrease in A&J's original bid price, but find that the evidence of the third mistake is not clear and convincing. Since the contract as awarded reflects the correction, there is no legal basis for reformation.

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The solicitation, No. 3-SB-70-00450/DC-7554, required bidders to submit individual prices for line items 1 through 11 and 136 through 202, covering mobilization and preparation, labor, and materials other than pipe. However, it gave bidders the option of listing either individual prices or a lump sum subtotal for items 12 through 135, covering various lengths of pipe. Bidders choosing the latter option were required, within 96 hours of opening, to submit prices for each item included in the subtotal.

A&J's apparent low bid was \$3,984,374. However, the actual sum of its individual prices and the subtotal was less than this amount:

Items	1	-	11	
and	136	-	202	\$2,012,006
Subtotal (Items				+
	12	-	135)	<u>1,963,088</u>
				<u>\$3,975,094</u>

After bid opening, A&J informed the contracting officer that there was an "erroneous number in the pipe option proposal" (items 12 through 135), and submitted prices totaling \$1,972,368 for the items covered by the subtotal. Thus, the sum of all items equaled A&J's original low bid:

Items	1	-	11	
and	136	-	202	\$2,012,006
				+
Items	12	-	135	<u>1,972,368</u>
				<u>\$3,984,374</u>

Meanwhile, the contracting officer had discovered apparent errors in A&J's extension of unit prices for item 10, covering 6 cubic yards of riprap (stone used as foundation), and item 174, for the supply and installation of 30 butterfly valves:

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Item	Quantity	Unit Price	A&J's Extended Price	Correct Extended Price	Difference
10	6	\$ 25	\$ 125	\$ 150	+ \$25
174	30	750	21,000	22,500	+ \$ 1,500

The contracting officer therefore asked A&J to confirm that it had intended to bid \$3,976,619, or \$1,525 more than the total of the individual prices and the subtotal in the original bid.

In its response, A&J confirmed that it had mistakenly extended the unit prices for items 10 and 174, intending to bid \$150 and \$22,500, respectively. However, it still contended that it had intended to bid \$1,972,368 for items 12 through 135 and that therefore it had intended a total bid of \$3,985,899:

Items 1 - 11 and 136 - 202 (as bid)	\$2,012,006
Corrections -- Items 10, 174	+ 1,525
Items 12 - 135	<u>+1,972,368</u> <u>\$3,985,899</u>

A&J explained that it had prepared its bid by first calculating its total bid price from worksheets, then inserting unit prices for items 1 through 11 and 136 through 202 based upon unit prices ("plug numbers") from abstracts of similar projects, then extending these unit prices, and finally, subtracting the total of the extended and lump sum prices for items 1 through 11 and 136 through 202 from its intended total bid price. Thus, A&J had arrived at the lump sum subtotal stated in its initial bid. A&J claimed that the discrepancy between that subtotal and its intended subtotal occurred because it had inadvertently added \$9,300 for item 191 twice and failed to add \$20 for item 11. This error increased the total of the enumerated items by \$9,280 and, because this amount was subtracted from the intended total bid price to obtain the

subtotal, accordingly decreased that subtotal to \$9,280 below the intended bid.

In support of these contentions, A&J submitted a worksheet listing summary subtotals for the cost of materials, subcontractors, fuel, equipment, mobilization, and labor. To the total of these costs, various percentages (apparently for overhead and profit) had been added to arrive at possible bids of up to \$3,984,374. On a second page of the worksheet, \$2,021,286, the incorrect total for items 1 through 11 and 136 through 202, had been subtracted from \$3,984,374, the allegedly intended bid, to yield \$1,963,088, the sum listed in A&J Construction's initial bid as the lump sum subtotal. A&J also submitted copies of the adding machine tapes allegedly used to arrive at the \$2,021,286 sum. On these tapes, the extended price for item 10 was \$125, no price was listed for item 11, the extended price for item 174 was \$21,000, and the price for item 191 had been added twice.

Interior found clear and convincing evidence of the mistakes in extension and in addition of individual prices for the line items in the original bid. It determined that these could be corrected under the Arithmetic Discrepancies clause of the solicitation, which provided that in case of discrepancies between unit and extended prices, the unit price would govern. The clause also permitted correction of apparent errors both in extension of unit prices and in addition of lump sum and extended prices, stating:

"For the purposes of bid evaluation, the government will proceed on the assumption that the bidder intends its bid to be evaluated on the basis of the unit price, extensions, and totals arrived at by resolution of arithmetic discrepancies . . . and the bid will be so reflected on the abstract of bids."

Interior did not, however, find clear and convincing evidence that A&J intended to bid more than shown in the original bid for the items covered by the lump sum subtotal. The agency therefore determined that A&J's correct bid should have been \$3,976,619, calculated as follows:

Item	Error	Correction
10	Extension	+ \$ 25
11	Not added	+ 20
174	Extension	+ 1,500
191	Added twice	- 9,300
	Net Change	- \$ <u>7,755</u>
	Original Bid	\$3,984,374
		- 7,755
	Correct Bid	<u>\$3,976,619</u>

Since A&J's bid would be low whether or not further correction was permitted (the next-low bid was \$572,785 higher than A&J's original bid), and since Interior found that the best interests of the government required immediate award, the agency awarded the contract at the corrected price and forwarded the mistake claim to our Office. The parties have agreed to be bound by our decision.

As a general matter, a bidder who seeks correction of an error in its bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended bid price. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. See D. L. Draper Associates, B-213177, December 9, 1983, 83-2 CPD 662; G. N. Construction, Inc., B-209641, June 2, 1983, 83-1 CPD 598.

Although Interior and A&J agree as to the correction of the extension errors for items 10 and 174, in response to Interior's request, we have first reviewed these. We believe it was reasonable for Interior to rely upon the Arithmetic Discrepancies clause to correct the extended prices. See Holley Electric Construction Co., Inc., B-209384, January 31, 1983, 83-1 CPD 103. We note that it

is not clear that the unit price is the incorrect price, cf. Value Precision, Inc., B-191563, August 7, 1978, 78-2 CPD 97 (extended price, in line with other bids and government estimate, may be accepted despite a solicitation clause to the contrary), and that A&J's bid would be low whether the unit or the extended price was correct, cf. Hudgins Construction Co., Inc., B-213307, November 15, 1983, 83-2 CPD 570 (when either unit or extended price is reasonable, but only one would make the bid low, the bid must be rejected despite a solicitation clause stating that unit prices will govern).

We also believe that corrections to add the \$20 omitted for item 11 and to subtract the \$9,300 added twice for item 191 were reasonable. A&J admits to these errors and a comparison of A&J's original bid with the adding machine tapes submitted by A&J clearly shows that \$20 was omitted for item 11 and \$9,300 added twice for item 191.


As for the alleged \$9,280 understatement in the price for the lump sum subtotal that A&J claims offsets the above errors, we do not believe that Interior was unreasonable in finding the evidence that A&J intended to bid a subtotal of \$1,972,368 for items 12 through 135 to be less than clear and convincing. Nothing in the initial bid itself supports A&J's contention that since it first calculated its total bid price and only then determined the price for each item, the total bid price was correct. The figures in the workpapers submitted by the firm are no more than estimates of the costs of material, subcontractors, fuel, equipment, mobilization and labor, without any explanation as to how these costs were calculated.

While we do not question the veracity of A&J's claim that it first determined its total bid price and then allocated this among more than 200 bid items, given the unlikelihood of such a method, we do not believe that it was unreasonable for Interior to be other than clearly convinced by the evidence presented. Further, any skepticism Interior might have had could only have been intensified when A&J in effect contradicted its account of how it derived its total bid price by requesting upward correction of that price to reflect the correction of the extension errors in items 10 and 174. If the firm first determined

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its total bid price independent of the price for the individual items, then a mistake as to the price for some of those items should not have changed its intended total bid price.

Therefore, we do not believe A&J has made the requisite showing with regard to the mistake in the subtotal, and we find no basis upon which to reform the contract.

for 
Comptroller General
of the United States