



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: R.P. Richards Construction Company; PW Construction, Inc.

File: B-274859.2; B-274859.3

Date: January 22, 1997

C. Patrick Stoll, Esq., Herrig & Vogt, for R.P. Richards Construction Company, a protester.

Paul G. Marshall, Jr., PW Construction, Inc., a protester.

Hayes P. Haddox, Esq., and Robert W. Pessolano, 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

Bidder is not entitled to bid correction under the mistake-in-bid rules for judgmental errors in using an inappropriate subcontractor quotation and in relying on its own estimate instead of a supplier quote for certain materials.

DECISION

R.P. Richards Construction Company requests correction, which had been denied by the agency, of the low bid price upon which it received award of a construction contract under Department of the Army (Corps of Engineers) invitation for bids (IFB) No. DACA27-96-B-0038. It alleges two clerical errors involving quotations received from subcontractors. PW Construction, Inc., the next low bidder, contends that Richards's bid should be rejected and that award should be made to P.W. Construction.

We deny both the request for correction and the protest of the award to Richards.

The IFB, issued July 15, 1996, requested bidders to submit prices for a base bid (which consisted of five items) and for each of five options. Bids were opened on August 29. Richards submitted the low bid with a total price of \$10,731,000. Three other bids were received in the amounts of \$12,627,003, \$12,980,587, and \$13,233,250. The government estimate for the work was \$14,739,450.

Subsequent to bid opening, Richards informed the agency by a letter of August 29 that it had made two clerical errors in computing its prices, and it requested that its total bid price be increased by \$646,336. The specific errors concerned the structural steel work (including erection) in item 1 of the base bid and in the

second optional item. Richards stated that it relied on a quotation from H&M Steel, received about 30 minutes prior to bid opening, of \$415,000 and \$143,000 for the respective items. The person who priced the bid submitted a statement explaining that he had interpreted the H&M quotation--which listed various lines of excluded items from its quotation including the line stating "Erection, rebar & taxes"--to include the cost of erection for everything but rebar. However, it learned after bid opening, while attempting to discover the reason for the large variance between its price and the other prices received, that H&M's quotation did not include the cost of erecting the steel structure and that the quote was limited to materials. Since Richards had obtained a quotation from W&W Steel for both materials and erection of the steel structure prior to receiving H&M's quotation, Richard bases its request for correction on the difference between W&W's quotation of \$1,061,000 for the work and the H&M price of \$558,000 it used in formulating its bid price.

The second mistake claimed by Richards involved the specifications for wire mesh partitions. The price Richards used in its computations for the partitions was its own estimate of \$2,000, rather than a price of \$91,760 based on a quotation from Nevada Casters which it had received 2 days prior to bid opening. On this basis, Richards argues that it should be permitted to increase the price for the partitions by \$89,760. Adding this figure to the difference between the two quotations received on the structural steel work totals \$592,760. Adding intended profit to this figure results in the amount of the requested correction. After numerous discussions between the parties, the agency denied the request for correction on the basis that Richards was attempting to recalculate its prices. However, award was made to Richards on its original total bid price with Richards retaining the right to obtain a decision from our Office regarding its request for bid correction.

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) §14.407-3(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; Department of the Interior--Mistake in Bid Claim, B-222681, July 23, 1986, 86-2 CPD ¶ 98.

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. 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 contractors. 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 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).

This is not, however, a case where the bidder submitted its bid based on errors made by the potential subcontractor. The record shows that no subcontractor errors occurred which precluded Richards from making a knowing judgment about its actual intended bid.

The record shows that Richards received two quotations for structural steel prior to the submission of its bid--one for \$558,000 and the other for \$1,061,000. Despite the large difference between these prices, Richards knowingly chose--we must assume this was based on the conclusion that \$558,000 was a reasonable price for the work--to use the lesser amount in computing its bid. The subcontractor, H&M, did not make a mistake in computing its quotation. The quoted items--"Erection, rebar & taxes"--were listed in H&M's quote as items not covered by the quotation. Given the comma between "erection" and "rebar," we think the estimator had no reasonable basis to assume that the subcontractor only intended "erection of rebar" to be excluded. Further, H&M's 2-page quotation contained a list of steel products on the first page and stated on its second page that the quotation was "limited only to those materials or services expressly stated on the first page hereof." Moreover, H&M's quotation noted that the prices were "F.O.B. job site," which would indicate that once the steel was delivered to the job site, H&M's contract obligations were fulfilled. In short, this quote is not reasonably interpreted as covering the erection of steel structures and does not contain any error made by the subcontractor.

Regarding the wire mesh partitions, there is no clear and convincing evidence to show that the original in-house estimate of \$2,000 used by Richards was not the intended bid. Richards had the Nevada Casters's quotation prior to submitting its bid and disregarded it in favor of its estimate for the work, notwithstanding the large disparity between its estimate of \$2,000 and Nevada Casters's quote of \$91,760. It thus appears that Richards made an error in judgment in computing its bid based on its own estimate; mistake in bid relief is not available for such errors. Handy Tool & Mfg. Co., Inc., supra.

Finally, contrary to the assertion of PW Construction, award to Richards based upon its uncorrected price was proper. Award to a bidder that has alleged a mistake in bid and is not permitted to correct the bid is proper if the bidder is willing to accept award at the uncorrected price and it is clear that the bid would have been low regardless of any mistake. Dynalectric Co., B-265762.2, Feb. 15, 1996, 96-1 CPD ¶ 97. PW Construction does not allege, or show, that the alleged mistakes would result in Richards's price no longer being low if those mistakes had been corrected.

Accordingly, the request for correction and the protest against the award are denied.

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