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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** PCL Constructors Canada, Inc.--Reconsideration

**File:** B-274697.2

**Date:** May 13, 1997

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Geoffrey T. Keating, Esq., Thomas F. Burke, Esq., and Richard C. Wall, Esq., McKenna & Cuneo, for the protester.

Alex D. Tomaszczuk, Esq., and Matthew A. Anzaldi, Esq., Shaw, Pittman, Potts & Trowbridge, for Axor Engineering Construction Group, Inc., an intervenor.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Request for reconsideration is denied where protester has not shown that prior decision contains either errors of fact or law or presented information not previously considered that warrants reversal or modification of prior decision.

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### **DECISION**

PCL Constructors Canada, Inc. (PCL) requests reconsideration of our decision, PCL Constructors Canada, Inc., B-274697, Dec. 24, 1996, 96-2 CPD ¶ 239, in which we denied its protest of the award of a firm, fixed-price contract to Axor Engineering Construction Group, Inc. (Axor) by the Department of State pursuant to invitation for bids (IFB) No. S-FBOAD-96-B-0001, for construction of the new United States Embassy Chancery building in Ottawa, Ontario, Canada.<sup>1</sup> PCL protested that the agency had improperly allowed Axor to correct a mistake in its bid before awarding the contract to it and that Axor's bid should have been rejected. We found that Axor's workpapers and supporting statements provided clear and convincing evidence establishing both the existence of the mistake and the intended bid price, and, therefore, held that the agency properly allowed Axor to make an upward correction to its bid.

We deny the reconsideration request.

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<sup>1</sup>For a full discussion of the facts and our rationale in denying PCL's protest, see PCL Constructors Canada, Inc., *supra*.

In its protest, PCL argued that there was no clear and convincing evidence of the mistake or what price Axor actually intended to bid if a mistake was made. After examining the entire record (including Axor's bid workpapers, an affidavit from Axor's president explaining how the mistake was made, the protester's arguments, and the agency's report), we determined that, contrary to PCL's contention, there was clear and convincing evidence both of the mistake and of the intended bid. Accordingly, we held that the agency properly allowed Axor to correct its bid and awarded the contract to Axor.

The basic facts upon which we based our decision were as follows. The IFB requested bids for the basic contract work (i.e., constructing a four-story chancery office building) and for an alternate work item (i.e., constructing pedestrian steps adjacent to the office building). The IFB required bidders to submit a total price for the basic project and a separate total price for the alternate work item. The bid schedule included a large number of line items representing various work items, but bidders were not required to separately price each line item. Award was to be made to the bidder whose bid was lowest priced for the basic work only.

Upon bid opening, Axor's bid of \$50,700,000 was the apparent low bid, and PCL's bid of \$57,367,000 was the apparent second-low bid.<sup>2</sup> The contracting officer requested that Axor verify its bid price, and Axor responded that it had made a mistake in its bid. Axor explained that in calculating its total bid price, it had originally used its own estimate instead of \$8.75 million for the cost for a line item representing "miscellaneous metals" work; the estimate for this line item was shown on Axor's original bid spreadsheet as a \$4.0 million deduction from a subcontractor's quote of \$12.75 million. Axor further explained that less than 1 hour before bid opening, it received and decided to use a second subcontractor's quote of \$9.0 million instead of its estimate for the miscellaneous metals work. In order to accomplish the substitution of the second subcontractor's quote for its own estimate, Axor would have had to delete both the original subcontractor's quote (\$12.75 million) and the deduction (\$4.0 million) from the bid spreadsheet and to replace them with the new quote of \$9.0 million. However, in its haste, Axor failed to delete the \$4.0 million deduction. Thus, Axor's latest spreadsheet showed that Axor replaced the first subcontractor's quote with the second subcontractor's quote but retained the \$4.0 million deduction. This resulted in Axor's pricing the miscellaneous metals work at just \$5.0 million (the second quote of \$9.0 million minus the \$4.0 million deduction) instead of the \$9.0 million intended price.

After discussing the matter with Axor's representatives, agency officials determined that Axor's bid was mistaken. The agency recognized that the bid spreadsheets showed that Axor had erroneously deducted \$4.0 million from the new, replacement

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<sup>2</sup>All prices are in Canadian dollars.

quote for miscellaneous metals work. However, the agency apparently did not recognize that Axor also intended to increase its price for this work from \$8.75 million ( i.e., its original estimated price) to \$9.0 million (i.e., the amount of the second quote). Thus, contracting officials only allowed Axor to correct its bid upward by \$3.75 million, to a total price of \$54,450,000, and awarded the contract to Axor at that price.

In requesting reconsideration, PCL contends that our previous decision was based upon an error of fact because we stated that there was clear and convincing evidence of the mistake and of the intended bid. PCL argues that there is "substantial uncertainty" regarding the amount of Axor's intended bid, as evidenced by the fact that Axor claimed it had made a \$4.0 million mistake by failing to delete the deduction from the price for the miscellaneous metals line item, but the agency only allowed Axor to correct its bid upward by the amount of \$3.75 million. PCL contends that the \$250,000 discrepancy between the amount of the mistake and the allowed upward correction cannot be explained and, therefore, there is no evidence of the amount Axor intended to bid. We do not agree.

Axor's explanation of how it made a mistake and what it would have bid if it had not made a mistake was fully supported by the bid workpapers and subcontractor quotes Axor submitted in support of its mistake claim. The record contained two bid spreadsheets, prepared at different times, that were used in calculating Axor's total bid price. The earlier spreadsheet revealed that Axor intended to price the miscellaneous metals work at its estimated price of \$8.75 million which was computed by inserting a \$12.75 million figure<sup>3</sup> and then deducting \$4.0 million from it. The later-prepared spreadsheet showed that Axor intended to substitute a \$9.0 million figure<sup>4</sup> for its earlier \$8.75 million estimate; the later spreadsheet also revealed that Axor had mistakenly neglected to delete the \$4.0 million deduction that was used to make its earlier estimate. Thus, as it was abundantly clear from the bid spreadsheets, supporting affidavit, and the subcontractor quotes for miscellaneous metals work, what Axor's mistake was and what Axor's intended price would have been but for that mistake, we correctly held that the agency properly allowed Axor to make an upward correction to its bid and awarded the contract to that firm.

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<sup>3</sup>This figure was taken from a quote Axor received from a proposed subcontractor, Charland Iron Works.

<sup>4</sup>This figure was taken from a quote from another proposed subcontractor, J.C Rush/Rovico, received in the last hour before bid opening.

Regarding the \$250,000 discrepancy between the \$4.0 million mistake claimed by Axor and the \$3.75 million correction allowed by the State Department, as noted above, the discrepancy was the result of the agency not recognizing that Axor actually intended to increase its price for miscellaneous metals work upward from the \$8.75 million estimate to the \$9.0 million represented by the latest quote received. During the development of the protest file, in interrogatories addressed to all parties, we pointed out this discrepancy and solicited comments. Despite being made aware of the discrepancy, Axor did not amend its request for correction upward from the original \$3.75 million requested to the \$4.0 million amount that represented the full extent of the mistake that was supported by the bid workpapers. As a result, because Axor only requested correction of \$3.75 million, we correctly held that the agency properly allowed the correction of the amount requested. PCL simply has no standing to raise Axor's failure to amend its request by an additional upward correction in the amount of \$250,000, since it is the responsibility of the contracting parties--the government and the low bidder--to assert rights and to proffer evidence to resolve mistake questions. Collins Siding Co., B-237130, Oct. 16, 1989, 89-2 CPD ¶ 358.

PCL also contends that it is impossible to tell exactly what bid price Axor intended because Axor's bid spreadsheets included a total of \$1.4 million in discounts that were taken from the original, mistaken bid total. PCL argues that Axor might have discounted a higher or lower amount from the corrected total (*i.e.*, if the \$4.0 million deduction mistakenly taken from the miscellaneous metals line item were added to its worksheet total). However, as explained in our prior decision, the mistake verified by the bid workpapers was limited to the miscellaneous metals work alone. Each of the additional price adjustments contained in the handwritten notes on the bid spreadsheets were specifically related to particular work items, and none of the adjustments were associated in any way with miscellaneous metals work. Accordingly, we had no reason to believe that the other discounts would have been affected by correction of the miscellaneous metals mistake and correctly concluded that the agency properly allowed Axor to correct its bid.

Finally, PCL contends that the workpapers submitted by Axor were not in good order and, therefore, the State Department could not properly have relied upon them to determine that a mistake was made. More specifically, PCL asserts that the C. J. Rush/Rovico quote was missing a page, thus preventing the State Department from properly evaluating Axor's claimed mistake. However, there is no merit to this argument because Axor did in fact provide the allegedly "missing page" to the contracting agency and our Office, and the entire quote was examined before we decided that Axor had made a mistake and what its intended price would have been.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. Bid Protest Regulations, § 21.14(a), 61 Fed. Reg. 39039, 39047 (1996) (to be codified at 4 C.F.R. § 21.14(a)). PCL has not met that standard.

The request for reconsideration is denied.

Comptroller General  
of the United States