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Tyler Przybylek

Proc. XI

## DECISION



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

FILE: B-187220

DATE: October 8, 1976

MATTER OF: Federal Aviation Administration - Bid Correction

## DIGEST:

1. Correction of bid mistake which would result in displacement of another bidder may be effected only where mistake and bid actually intended are ascertained substantially from invitation and bid, without resort to bidder's worksheets.
2. Where bid contains discrepancy between unit and total price for an item, bid may be corrected downward to reflect a unit price which is consistent with the total price, even though another bidder is displaced, since only the total price reasonably could be regarded as having been intended bid.

The Federal Aviation Administration (FAA) requests an opinion whether Dondlinger & Sons Construction Company's (Dondlinger) worksheets may be utilized to determine that company's intended bid. There is a discrepancy between the bidder's unit and total bid price for one item. If the total amount is accepted, Dondlinger is the low bidder; if the unit price is utilized, then another bidder, Hunt Building Company (Hunt), is the low bidder.

Invitation for bids (IFB) No. CE55-6-19, issued on April 1, 1976, covered the construction of a low activity radar airport traffic control tower at the Springfield Municipal Airport, Springfield, Missouri. Eleven bids were opened on June 3, 1976. The abstract of bids indicates that the two apparent low bids were as follows:

	DONDLINGER		HUNT	
	<u>UNIT</u>	<u>TOTAL</u>	<u>UNIT</u>	<u>TOTAL</u>
SCHEDULE I				
ITEM 1	xxxx	\$831,000	xxxx	\$839,707
ITEM 2a	\$64.03	3,300	\$16.00	6,000
ITEM 2b	2.55	700	7.00	1,925
ITEM 2c	xxxx	4,000	xxxx	6,075
SCHEDULE II				
ITEM 1	xxxx	18,000	xxxx	13,000
TOTAL		\$857,000		\$866,707

By letter dated June 7, 1976, Dondlinger formally requested that its unit price for item 2a be corrected to \$8.80. Dondlinger asserted that a mistaken unit price resulted from an error in division of the total amount for the item. Item 2a calls for the construction of a water supply well. The contractor is to be reimbursed at the unit price specified for the number of lineal feet actually drilled. Bidders were asked to bid a total amount for the item, based on the Government's estimate of 375 lineal feet. If Dondlinger's unit price of \$64.03 controls, its total price for the item would be \$24,011.25, instead of \$3,300 as stated, in which case it would not be the low bidder. On the other hand, if the total price of \$3,300 controls, then the bidder's unit price would be \$8.80 and Dondlinger would be the low bidder.

FAA's initial reaction to the request for correction was to deny the request. The agency reasoned:

" \* \* \* we concluded that the essential element allowing correction was that the bid actually intended was ascertainable substantially from the face of the bid, and that no information was obtained from the bidder other than verification of the facts which were apparent on the face of bid. After analysis of the Dondlinger bid, we concluded that the bid, on its face, did not clearly indicate whether Dondlinger intended the total price, or the unit price of Item 2a, to be the actual bid. We reached this conclusion because there were no formulas or other information in the bid which indicated the procedures used to arrive at the bid price. Moreover, other bids for Item 2a ranged from a low \$8 lineal foot to \$30 lineal foot, with several bids between \$16 and \$20 per lineal foot. Accordingly, we believed that the Dondlinger bid of \$64.03 per lineal foot was not so significantly out of line with other bids as to clearly establish that the error lay in the unit as distinguished from the total price. Further, the unit price, if corrected to \$8, would have been the second lowest price for Item 2a, and would have been somewhat lower than the Government estimate of \$10 per lineal foot.

"Since it was not possible from the face of the bid to determine which price (unit or total) was intended, but was possible to do so only by reference to bid sheets and other extrinsic evidence, we

B-187220

concluded that the bid could not be corrected \* \* \*. Correction pursuant to FPR 1-2.406.3, 'other mistakes disclosed before award', was not considered because based upon the unit prices, the uncorrected bid was not the lowest bid received, and correction would have resulted in displacement of a lower bid."

FAA reports, however, that since making this determination, it has become aware of our decision in Dyneteria, Inc., B-184321, July 14, 1976, 76-2 CPD 42, which reconsidered Worldwide Services, Inc., B-184321, February 18, 1976, 76-1 CPD 108. These opinions have caused FAA to have some doubt regarding its determination. FAA states:

"After reviewing these decisions, we are uncertain as to their application to the Dondlinger case. In Worldwide Services, work sheets were furnished by the bidder to verify that a mistake had been made; and partially through the use of such sheets, it was determined that the bidder's mistake was clerical in nature. Apparently the sheets were utilized to determine that the bidder's intended bid could be ascertained from the face of the bid itself. Later, in Dyneteria, it was decided that the work sheets did not clearly support this conclusion; and, accordingly, the result in Worldwide was reversed. It is not clear from the language of these cases whether work sheets may now generally be used for corrective purposes whenever there is a discrepancy between unit and total prices; or whether, on the other hand, such sheets may be used only where it is already fairly clear, from the face of the bid, which price is mistaken. As noted earlier, our view is that, in the latter case, correction would not be authorized for Dondlinger, because both his unit and total prices fall within the range bid by other bidders."

Because of this doubt, the FAA has requested our advisory opinion.

We do not believe that either Worldwide Services or Dyneteria has changed the law concerning whether worksheets may be used for bid correction purposes. Where the intended bid price is clear on the face of the bid, resort need not be made to the bidder's worksheets to determine the bidder's apparent intent. But in the cited cases we held that where worksheets

B-187420

are furnished pursuant to Armed Services Procurement Regulation (ASPR) § 2-406.2, which requires verification prior to correction of an apparent clerical mistake, and where the worksheets are inconsistent with what at first appeared to have been intended, the worksheets may not be ignored where to do so would result in the displacement of an otherwise low bidder. In these cases, worksheets were introduced for the purpose of confirming the apparently intended bid, not for the purpose of resolving doubt as to the bidder's intent. Therefore, these cases open no new avenues for the consideration of worksheets to make bid corrections. If Dondlinger's intended bid price is not apparent from the face of its bid, reference may not be made to the bidder's worksheets.

Dondlinger questions, however, the FAA position that the intended bid is not substantially ascertainable from the bid itself. In this regard, the FAA concluded that:

"It is not possible to determine if the error occurred in the unit price or the price extension, especially since Fortec Constructors (the third low bidder) bid \$50.00 per lineal foot and other bids on Item 2a ranged from \$8.00 to \$25.00 per lineal foot. \* \* \*"

Dondlinger argues that it is obvious from the bid that an error had been made and that the total amount bid, \$3,300, is the correct (i. e. intended) bid and not \$64.03 per lineal foot which was inserted mistakenly. In support of this position the following observations are offered:

"1. There were eleven bidders for this contract and their prices for Item 2a, with the exception of the Fortec bid, ranged between \$8.00 and \$25.00, with the government estimating \$10.00.

"2. If the \$64.03 figure was correct, then the extended price on Dondlinger's bid Item 2a would be \$24,011.25. If this were placed in the extended amount column, then the total bid would not be \$857,000.00. The estimated amount column adds correctly, but if the \$64.03 figure is relied upon, this would change the bid, requiring the correction of the total price bid.

"3. It is also apparent from tabulation that in the estimated amount column of all bidders, one through eleven, all of the estimated amounts were rounded off to the nearest dollar. In most cases, the figures were actually rounded off to much higher figures than one dollar, viz., the nearest \$50.00. If the \$64.03 were relied upon as being correct, this would result in Dondlinger bidding a figure \$24,011.25 which is not rounded off."

Generally, when there is a discrepancy between a unit price and the extended price and the bid would be low on the basis of one price but not the other, correction is not allowed because the discrepancy cannot be resolved without resort to evidence which is extraneous to the bid and has been under the control of the bidders. 51 Comp. Gen. 283 (1971); 49 id. 107 (1969); 49 id. 12 (1969). However, where it is clear from the bid itself what price was actually intended, or where on the basis of logic and/or experience, it can be determined that one price makes sense while the other does not, correction of a bid and displacement of another bidder is allowed.

In some cases, it is obvious solely from the bid itself what was actually intended. See, e.g., Atlantic Maintenance Company, 54 Comp. Gen. 687 (1975), 75-1 CPD 108; 46 Comp. Gen. 77 (1966). In most cases where correction and displacement have been allowed, the intended bid was determined from both something in the bid itself (such as a bid price or another item for similar work, 36 Comp. Gen. 429 (1956) and 41 Comp. Gen. 469 (1962); a unit price schedule showing how the bid price to be entered on the bid schedule was computed, B-173492, November 25, 1971; a bid bond, B-170450, November 13, 1970; and a consistent pattern of bidding on the incorrect unit. Dyneteria, Inc., supra and Worldwide Services, Inc., supra) and from a comparison of the inconsistent bid prices with other bid prices received, the Government estimate, and prior Government experience. In relatively few cases, however, correction and displacement have been allowed solely on the basis of this latter comparison because it was clear from the comparison that only one of the discrepant bid prices could reasonably be regarded as having been the intended bid. See, e.g., B-164453, July 16, 1968, where it was determined that a decimal point error in the unit price had been made because the stated unit price would result in an extended price 10 times greater than the stated extended bid price and 4 times as great as the highest bid received on the item, while the corrected unit price was close to the Government estimate.

B-187220

In this case, we think the standard for correction is met, notwithstanding FAA's contrary determination. We note that every individual item on the Dondlinger bidding schedule, except for the disputed unit price, was substantially below the Government's estimate and lower than most or all of the other bid prices. Although FAA points out that one bid for item 2a was in the amount of \$50, we believe that this bid is clearly not based on a realistic value of the work called for by the item and is not a reliable indication for bid comparison purposes. This bidder quoted an even higher price for substantially similar but less expensive work under item 2b--unit price of \$80 for well drilling below the casing point compared to a unit price of \$50 for drilling to the casing point under item 2a. Furthermore, we believe Dondlinger's bid of \$2.55 on item 2b provides a clear indication of what was intended on item 2a. According to the Government estimate the difference between item 2a and item 2b should be \$6 per unit (\$10 less \$4), which is attributable to installation of the well-casing under item 2a. Most bids received did, in fact, reflect a higher price for the more costly item 2a than for item 2b. Aside from the unrealistic bid mentioned above and the Dondlinger bid, only one bidder submitted a higher unit price for item 2b than for item 2a, and we note that this bidder submitted the only total bid (\$1,783,750) which exceeded the Government estimate (\$1,007,039). Furthermore, we think it is unrealistic to expect that Dondlinger, which submitted a highly competitive bid in all other respects, placed a value of \$61.48 (\$64.03 less \$2.55) on the well-casing work when the Government estimate value for that work is \$6 and most bidders valued it at no more than \$19.

We believe from these circumstances that clear and convincing evidence is available, substantially ascertainable from Dondlinger's bid, that the item 2a unit price of \$64.03 is mistaken and that the total price of \$3,300 is the correct price.

Deputy

*R. F. Kottler*  
Comptroller General  
of the United States