

DECISION



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

FILE: B-205693.2

DATE: August 9, 1982

MATTER OF: HD Company

DIGEST:

1. Where a bidder does not show by clear and convincing evidence that it made a mistake in a unit price for a line item in a formally advertised bid, the unit price may not be corrected and the agency's upward revision of that line item's total price based on an arithmetic discrepancy between unit and extended price is proper.
2. Agency's downward revision of bidder's extended line item totals based on that firm's acknowledgment of an amendment reducing unit quantities was proper because the mistake was an apparent clerical error.

HD Company protests the award of a timber sales road construction contract to SK Construction, Inc., under invitation for bids (IFB) No. R1-11-82-2 issued by the Department of Agriculture's Forest Service. HD contends that its low bid was improperly corrected upward by the Forest Service, and further, that SK's bid was improperly corrected downward to make it low. We deny the protest.

At bid opening, HD was the apparent low bidder at \$229,922.14. SK's apparent bid was \$237,822.81. After revisions to the bids pursuant to the mistake in bid procedures set forth in Federal Procurement Regulations (FPR) § 1-2.406 (1964 ed.), HD's bid was \$237,806.14 and SK's, \$230,109.81. The contract was awarded to SK.

HD's Bid

The Forest Service reports that when the amounts bid were checked by comparing units, unit prices, and subtotals for each line item, the contracting officer

found an arithmetic discrepancy in HD's bid for item No. 625(05) which was submitted as follows:

<u>"Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
Acre	21.90	\$400.00	\$876.00"

The Forest Service noted that HD's unit price of \$400 was incorrectly extended to a subtotal of \$876, instead of \$8,760. The contracting officer considered this discrepancy between unit price and extended price to be the result of "an obvious misplacement of [a] decimal point" by HD, and, therefore the agency corrected HD's bid for the item upward by \$7,884 (the difference between \$8,760 and \$876) which resulted in a corrected total bid of \$237,806.14.

HD contends that it should have been afforded the opportunity to choose its original bid of \$876 for item No. 625(05) instead of the bid of \$8,760 as corrected by the Forest Service. The Forest Service, however, correctly points out that allowing a bidder such a choice would be improper in a formally advertised situation. In this connection, we note that a bidder may not change or explain the meaning of a bid after bids have been opened. The bidder's intentions must be determined from the contents of the bid itself at the time of bid opening. Emmit A. Kendall, B-199850, October 31, 1980, 80-2 CPD 351. Nevertheless, HD alleges that the \$876 subtotal was correct because it intended to bid \$40 instead of \$400 per unit for the line item. In this regard, HD argues that it should have been allowed to correct its unit bid price from \$400 to \$40 after bid opening under the mistake in bid procedures of FPR § 1-2.406.

Generally, an agency may permit a bidder to correct a mistaken portion of its bid after bid opening only when the bidder presents clear and convincing evidence of both the existence of a mistake and the bid actually intended. FPR § 1-2.406-3(a)(1). In addition, when correction would result in displacement of another bidder, the intended bid must be ascertainable from the bid itself. FPR § 1-2.406-3(a)(3). In this case, given the correction of SK's bid, see p. 4, infra, HD's requested correction would result in displacement of SK's bid as the low bid, so that HD's entitlement to correction should depend on the displacement rule. However, even if we apply the less stringent clear and convincing rule (as it appears the agency did), we find no basis to permit HD's requested correction.

The Forest Service rejected HD's mistake claim, noting that \$40 per unit would be an extremely low price for the work in question. The agency reports that the Government estimate for this unit was \$325 and that the unit price for all other bids for this item ranged from \$150 to \$750.

In support of its mistake claim, HD merely states that it had a "justifiable business reason" for its intended bid of \$40 per unit. No explanation of its reasoning is presented, and no assertion that its intended bid was ascertainable from its bid is made. Furthermore, HD has submitted to our Office only uncertified copies of its bid estimating sheets which purport to show a unit estimate of \$40 for the line item in question. In our opinion, HD has not provided clear and convincing evidence that it made a mistake in its unit price and we therefore have no basis to disturb the Forest Service's determination not to allow correction of that price. Cf. Brendle Sprinkler Company, Inc., B-202971, July 15, 1981, 81-2 CPD 39. Accordingly, the Forest Service's upward revision of HD's bid based on an arithmetic discrepancy between the unit and extended price was proper. See Fortec Constructors, B-203627, February 16, 1982, 82-1 CPD 132.

SK's Bid

In reviewing SK's bid, the Forest Service found errors in the following two line items:

<u>"Item Number</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
201(01)A* * *	Acre	35.25	\$2,800.00	\$98,700.00
	*	*	*	
"603(01)A* * *	Lin Ft	2,062	\$ 14.10	\$29,074.20"

The Forest Service noted that SK had acknowledged an amendment to the IFB which modified the unit quantities of both of the above line items in the following manner:

"Item 201(01)A is decreased by 2.1 acres - new total is now 33.15 acres. Item 603(01)A is decreased by 130 Lin Ft - new total is now 1932 Lin Ft."

In this regard, however, SK did not amend its sub-totals for the two line items on the bid schedule to correspond with the decreased unit quantities it had acknowledged in the IFB amendment. Therefore, the contracting officer corrected SK's bid for the two line

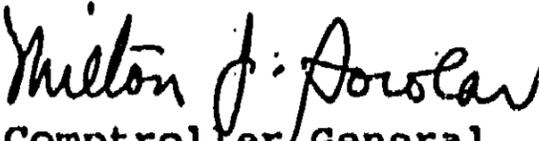
items by multiplying the unit prices as bid by the new decreased unit quantities as shown in the acknowledged IFB amendment.

The corrections made in the two line items reduced SK's total bid by \$7,713, thus making it low at \$230,109.81. Subsequently, a contract was awarded to SK.

HD contends that the Forest Service's revision of the subtotals for two line items of SK's bid by multiplying the unit prices SK bid by the amended quantities was tantamount to improperly allowing SK to change its bid after bid opening. We disagree.

In the first place, SK had no ability to control the Forest Service's purely mathematical adjustment to the bid schedule based on what the Forest Service believed was an apparent clerical error, that is, SK's failure to amend the extended subtotals to reflect the reduced quantities shown in the amendment that it acknowledged. The mistake, then, was clearly apparent on the face of the bid and correction pursuant to FPR § 1-2.406-2 was proper. Therefore, a situation in which SK would be allowed somehow to manipulate its bid price after bid opening simply did not exist. We also note that the terms of the IFB reserved for the Forest Service the right to make an award on any item for a quantity less than the quantity offered at the unit price offered (paragraph 10(c) of Standard Form 22), unless the bidder restricted its bid. SK did not restrict the agency's right to award it a lesser quantity here. There is nothing in the IFB that precluded a bid for a larger quantity than specified. Thus the agency had the authority to award SK the lesser quantity it actually required at the unit price bid, without resort to the bid correction procedures, since SK did not claim a mistake in its unit prices. See Contract Machining Corporation, B-201116, May 15, 1981, 81-2 CPD 61.

The protest is denied.

for 
Comptroller General
of the United States