



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DeRalco, Inc.
File: B-228721
Date: October 7, 1987

DIGEST

1. Protest of the contracting agency's decision to allow upward price correction of an allegedly mistaken low bid, which would result in the bid remaining low by a substantial amount, is denied where the worksheets submitted to support the allegation of mistake establish the claimed intended bid by clear and convincing evidence.
2. Low bidder may withdraw claim for upward correction and accept award at original bid price where bid clearly would be low in any case.

DECISION

DeRalco, Inc., protests the decision of the Army Corps of Engineers to permit Mobley Construction Co. to correct a mistake in Mobley's low bid under invitation for bids (IFB) No. DACA60-87-B-0012. The IFB is for the construction of an addition to the Savannah River Ecology Lab in Aiken, South Carolina.

We deny the protest.

The Corps received four bids on July 8, 1987. Mobley's bid of \$845,800 was low, while DeRalco's bid of \$959,214 was next low. The government estimate was \$751,100. Before award, Mobley advised the Corps that it had made several mistakes in its bid, one being the omission of a total of \$9,500 for the cost of a performance bond and builder's risk insurance. To support its claim, Mobley submitted bid estimate summary worksheets with the performance bond and builder's risk insurance total of \$9,500 omitted from the total bid column.

The Corps determined that Mobley had submitted clear and convincing evidence of the mistake, the manner in which it

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occurred, and the intended bid as to the omission of the performance bond and builder's risk insurance. The Corps therefore allowed Mobley to correct its bid upward by \$9,500, from \$845,800 to \$855,300, noting that Mobley's corrected bid was still \$103,914 below the next low bid. (The claims concerning other items were either withdrawn or disallowed.) DeRalco contends that the circumstances do not warrant either correction of Mobley's bid or award to Mobley at its original bid price.

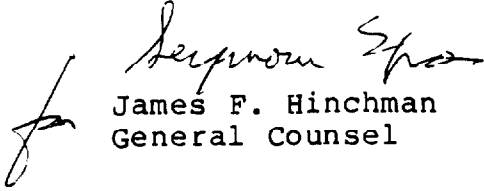
An agency may permit upward correction of a low bid before award, to an amount that still is less than the next low bid, where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(a) (1986); Fortec Constructors, B-203190.2, Sept. 29, 1981, 81-2 C.P.D. ¶ 264. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. Fortec Constructors, B-203190.2, supra. In this respect, as a general matter, in considering upward correction of a low bid worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. Montgomery Construction Co., Inc., B-221317, Feb. 28, 1986, 86-1 C.P.D. ¶ 210.

Our review of the worksheets submitted by Mobley confirms that the sum of \$9,500 allocated to performance bond and builder's risk insurance in the far left column was not included in the far right, total bid, column, as other items consistently were. Moreover, the amount claimed was reviewed by the Corps' estimators and found to be reasonable. We therefore agree with the Corps that Mobley has proven its intended bid with clear and convincing evidence, as required by the FAR, 48 C.F.R. § 14.406-3(a), as to the performance bond and builder's risk insurance, since the record corroborates the fact that Mobley intended to but mistakenly did not include \$9,500 in its bid price.

Finally, we point out that the fact that DeRalco withdrew or had disallowed other claimed items does not bar correction of the bid as discussed. The reason is that it is clear that the bid would be low under any circumstances, i.e., with or without correction of those other claims, which totaled \$44,200. See Porterhouse Cleaning and Maintenance Service Co., Inc., B-225725, May 18, 1987, 87-1 C.P.D.

¶ 522; Hercules Demolition Corporation of Virginia,
B-223583, Sept. 12, 1986, 86-2 C.P.D. ¶ 292.

The protest is denied.


James F. Hinchman
General Counsel