



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Swank Enterprises
File: B-228340
Date: November 18, 1987

DIGEST

Protest of upward correction of low bid is denied where the record supports contracting agency's determination that there was clear and convincing evidence establishing the existence of two mistakes in the bid and of the intended bid price, and bid is low with or without correction.

DECISION

Swank Enterprises, the second low bidder, protests the Army Corps of Engineers' decision to allow correction of two mistakes, alleged after bid opening, in the low bid of Truchot Construction Co., Inc., under invitation for bids (IFB) DACA67-87-B-0039, for the KC-135R Alter Fuel Systems Maintenance Dock at Malmstrom Air Force Base, Great Falls, Montana.

We deny the protest.

The five bids received in response to the IFB ranged from Truchot's low bid of \$1,305,460 to \$1,542,000. Truchot's bid price was 6 percent below the government's estimate of \$1,399,000 and \$139,540 (9 percent) below Swank's second low bid of \$1,445,000.

Both alleged mistakes involved the pricing of fire sprinkler systems required by the IFB. Truchot claimed the first mistake resulted when the \$120,000 cost of the fire sprinkler system required by item No. 0001 of the bid schedule was omitted from the bid due to a typing error during the input of data to a computer program designed to generate the bid for item No. 0001. With the addition of computations associated with insurance, profit, bond cost and permit cost, the total upward adjustment requested was \$127,732. The second mistake, a credit of \$29,956, involved the duplication of cost for another fire sprinkler system during the calculation of the bid price for work required by item No. 0006 of the bid schedule. The bid for item No. 0006 included sub-items for the sprinkler and electrical

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and mechanical work. Truchot claimed the cost of the sprinkler was included twice--in the sprinkler sub-item and the mechanical sub-item. With the two alleged mistakes, Truchot's requested corrected bid price was still low at \$1,403,236, or 2.8 percent below Swank's bid.

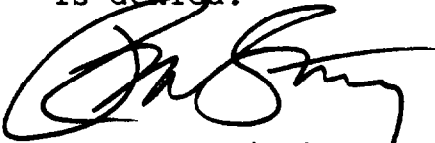
The Corps allowed the correction after reviewing Truchot's computer-generated summary sheet, subcontractors' quotations and affidavits, and determining that Truchot clearly and convincingly established both the existence of the mistakes and its intended bid price. Swank, while admitting that it has not seen Truchot's worksheets and other materials submitted to the Corps, calculates that Truchot's corrected bid for item No. 0001 would be higher than Swank's second low bid of \$1,445,000, and Truchot has offered to lower its bid for item No. 0006 only in order to avoid that result. Swank also contends that the corrections should not be allowed because Truchot's alleged mistakes and intended bid price are not apparent on the face of its bid and must be established through resort to extrinsic evidence.

The authority to correct mistakes after bid opening, but before award, is vested in the procuring agency; because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless it lacks a reasonable basis. Schoutten Constr. Co., B-215663, Sept. 18, 1984, 84-2 C.P.D. ¶ 318. Moreover, a bid may be corrected where the evidence is clear and convincing as to the existence of a mistake and the intended bid. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(a) (1986). While a bidder that is not low can have its bid corrected downward to displace the low bidder only if the mistake and intended bid are ascertainable substantially from the IFB and the bid itself, the evidence can come from outside the bidding documents where it is the low bidder that is trying to have its bid corrected upward based on an allegation of mistake. Id.

Here, the record clearly indicates that Swank's calculations are incorrect and that, as corrected for item No. 0001 alone, Truchot's bid stays lower than Swank's bid. The record also provides support for Truchot's claim of how the \$120,000 error occurred and provides the percentages used to calculate the added costs to reach the total requested correction of \$127,732 for item No. 0001. With regard to the credit of \$29,956, which is not needed to keep Truchot's bid below Swank's, the worksheets provided indicate that one subcontractor's bid for the mechanical sub-item under item No. 0006, which included the cost of the sprinkler, was entered as the mechanical cost and that another subcontractor's bid for the sprinkler system was entered as

the cost of the sprinkler sub-item, resulting in a duplication of the cost of the sprinkler.

The record thus provides a reasonable basis for the Corps' determination that there was clear and convincing evidence of the mistakes and of the intended bid price. The protest is denied.



for James F. Hinchman
General Counsel