



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: States Roofing & Metal Company, Inc.

File: B-237900

Date: April 3, 1990

Laird Bone and Peter Paul Mitrano, Esq., for the protester. Millard F. Pippin, Office of the Assistant Secretary, Department of the Air Force, for the agency. Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office has no basis to question agency's decision to permit upward correction of low bid where the work sheets the lowest bidder submitted to support its allegation of mistake establish the mistake and the claimed intended bid by clear and convincing evidence.

DECISION

States Roofing & Metal Company, Inc., protests award of a contract to J. Kokolakis Contracting, Inc., under invitation for bids (IFB) No. F08602-89-B0043, issued by the Department of the Air Force for the reroofing of five hangars at McDill Air Force Base, Florida. States Roofing argues that the Air Force improperly permitted Kokolakis to make an upward correction of its apparent low bid.

We deny the protest.

The Air Force received 11 bids in response to the solicitation. Kokolakis' low bid was \$1,332,212, States Roofing's second low bid was \$2,027,600, and the government's estimate for the work was \$2,130,000. The contracting officer requested Kokolakis to verify its bid because its price was substantially lower than the other bids and the government estimate. In response, Kokolakis informed the Air Force that it had made a mistake in its bid which had the effect of understating the labor costs for a portion of the work and requested that it be allowed to correct the mistake. In support of its request, Kokolakis provided an affidavit from its estimator, his original cost estimate sheets and work

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papers and an excerpt from an industry reference work, Means' Building Construction Costs Data (47th ed. 1989).

After reviewing this information, the Air Force determined that Kokolakis had submitted clear and convincing evidence of its mistake, the manner in which it occurred and the intended bid amount. The Air Force therefore allowed Kokolakis to correct its bid upward, resulting in a bid of \$1,633,456, noting that this corrected bid was still almost 20 percent below States Roofing's next low bid.

States Roofing generally argues that Kokolakis should be permitted to withdraw its bid after a mistake was discovered, but not be allowed to correct its bid upward after other bids and the government estimate have been disclosed, because of the possibility of fraud. In this regard, the protester questions whether the mistake occurred as alleged because the labor cost the protester obtained from the Means' publication is not the same as what the awardee says it obtained. The protester further contends that Kokolakis bid exactly what it intended and that while a contractor conceivably might misprice one item on a bid, it is unlikely that he mispriced five different items, as Kokolakis allegedly did here. Finally, the protester argues that this case falls within the rule that a contractor cannot correct its bid upward where it has calculated its bid on an incorrect premise, and seeks to recalculate it after bid opening based on factors not taken into account prior to bidding.

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 there is clear and convincing evidence establishing both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3; Humphrey Constr., Inc., B-236550, Nov. 13, 1989, 69 Comp. Gen. ____, 89-2 CPD ¶ 456. 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. DeRalco, Inc., B-228721, Oct. 7, 1987, 87-2 CPD ¶ 343. In this respect, in considering upward correction of a low bid, work sheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. BAL/BOA Servs., Inc., B-233157, Feb. 9, 1989, 89-1 CPD ¶ 138.

Our examination of Kokolakis' work sheets and the affidavit furnished by the firm shows that the Air Force had a reasonable basis to permit correction in this case.

Kokolakis' estimator states that in preparing an estimate, he uses preprinted "Construction Cost Estimate" forms on which he lists in the columns provided each item of work, its quantity, its unit of measure, and unit and total labor and material costs for each item. He estimates the quantity of each item before proceeding to calculate the labor and material costs for it. The error alleged here concerns the cost of labor for the task of installing new 2 by 6 inches tongue-and-groove pine decking on the five hanger roofs.

The estimator says that after calculating in square feet the amount of wood decking needed to cover the surface of the roofs, he calculated the labor costs of the decking installation. The record shows that on a piece of paper separate from the "Construction Cost Estimate," he arrived at a labor cost of \$1.38 per square foot by dividing the daily cost of a work crew by their expected daily production in square feet. The estimator states he then compared this figure against the Means' manual identified above, which expresses labor costs for heavy timber construction in terms of per thousand board feet. The estimator noted on his separate work sheet that for the installation of 2 by 6 inches tongue-and-groove flooring, "Means" indicated a labor cost of \$325 per thousand board feet, which equates to \$.325 per board foot.

Since the estimators' estimate of labor costs was in square feet, but the Means' manual was in board feet, the estimator needed to convert his square foot labor estimate into board feet in order to have a common basis for comparison. The work sheet shows that for this purpose he used a conversion formula (which none of the parties has questioned) of 1 board foot to 2.5 square feet: \$1.38 per square foot divided by 2.5 yielded \$.55 per board foot. Kokolakis states that it did not adjust its original estimate as a result of this comparison. The comparison indicated that Kokolakis had not underestimated the cost of the decking labor which, since it involved roofing, was expected to cost more than the flooring work listed in the Means manual.

Because of the additional calculations which Kokolakis' estimator performed, his \$1.38 figure--which represents his actual labor estimate based on specific crew size, salaries and productivity--is indented and appears in the middle of the page, while the \$.55 comparison figure appears at the foot of the page. As a result, Kokolakis' estimator states, when he transferred the unit labor cost for roof decking from the work sheet to the "Construction Cost Estimate," he mistakenly picked up the \$.55 figure from the bottom of the work sheet. He therefore used a per board foot figure where a per square foot figure was required. The use of the

correct labor cost of \$1.38 per square foot, with the appropriate markups for supervision, quality control, overhead and profit, would increase the price \$301,244, the amount for which Kokolakis requested correction. The contracting activity granted Kokolakis' request after consulting with the base civil engineer, who advised that the documents which the bidder had submitted were "appropriate," that the "point at which the mistake occurred is logical," that the "mathematical path of calculations is verifiable," and that his independent calculation based on industry recognized cost data was within 10 percent of the bidder's request.

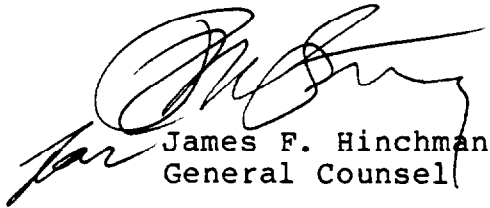
The protester questions the credibility of Kokolakis' account of how the alleged mistake occurred, particularly with respect to whether the estimator actually used "the Means catalog" prior to bidding this project. The protester states that this is because the protester's own estimate of the labor cost for installing the roof decking was only \$.20 per board foot, which is "in line with" the "Means Catalog" as well as with another reference work which Kokolakis did not claim to have used. It is apparent from our review of the record, however, that Kokolakis and the protester have referred to different manuals reflecting different labor conditions and issued in different years, although both are published by the R.S. Means Company. Both parties are "right" in the sense that the "Means" labor figure each has referred to can be found in the respective manual. Since Kokolakis' account is documented and internally consistent, and it used a 1989 edition of Means, we have no basis on which to conclude that the mistake did not occur as Kokolakis has described.

Next, States Roofing asserts that because this solicitation concerns five hangars, this case is similar to Reliable Sanitation, B-235863, Oct. 13, 1989, 89-2 CPD ¶ 350, in which we upheld an agency's denial of a bidder's request for upward correction, in part, because it was "unlikely" that the bidder--an incumbent contractor working from its prior contract price--would have inserted an allegedly mistaken price in its bid in six different places if that was not the price it intended to bid. Our decision in Reliable is distinguishable from the instant case in several respects. In the former case, unlike here: (1) we were reviewing an agency's exercise of its discretion to deny correction, not permit it; (2) the bidder's price was within the range of reasonableness, so there was no reason to suspect a mistake; and (3) the bidder offered no explanation as to why it had failed to copy the correct number from its work sheets to its bid. Here, it appears that Kokolakis performed one calculation as to the roof decking labor and then simply

transferred the mistaken \$.55 figure to its "Construction Cost Estimate," which because it is summary in nature involved only two, and not five, entries of this figure.

Next, we find that States Roofing's reliance on "mistaken premise" or "misinterpreted specification" cases is misplaced.^{1/} In these cases, upward correction of a bid was not allowed because the bidder had misinterpreted the specifications (i.e., believed that drawings reduced to one-half scale represented the actual dimensions) or omitted a factor in its bid (i.e., intentionally omitted a state use tax in computing its bid), and sought to recalculate its bid after opening to take into account factors which were never considered at the time the bid was prepared. In this instance, Kokolakis did not misinterpret the specifications or omit any critical factors. Its work sheets show explicitly that it did take into account roof decking labor and had arrived at the \$1.38 figure for it, but then mistakenly transferred to its bid summary sheet that cost as converted to another unit of measure. The correction upward does not allow Kokolakis to include factors it did not have in mind when the bid was submitted.

Accordingly, the protest is denied.



James F. Hinchman
General Counsel

^{1/} States Roofing cites Central Builders, Inc., B-229744, Feb. 25, 1988, 88-1 CPD ¶ 195; Oregon Elec. Constr., Inc., 68 Comp. Gen. 110 (1988), 88-2 CPD ¶ 512, and American Dredging Co., Inc., B-229991.2, Sept. 15, 1988, 88-2 CPD ¶ 248, to support its assertion that Kokolakis should not be allowed to correct the error in its bid.