

Hasfurther



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R.C. Construction Company, Inc.

File: B-241176.2

Date: February 5, 1991

Charles M. Powers for the protester.
D. Dale Hamilton III for General Roofing Company, an interested party.
Herbert F. Kelley, Esq., Department of the Army, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of contracting agency's failure to permit the protester to correct a mistake in bid is denied where correction would have displaced the low bidder and the protester's intended bid price is not apparent from the bid itself.

DECISION

R.C. Construction Company, Inc. protests its failure to receive award of a 1-year requirements contract under invitation for bids (IFB) No. DAKF23-90-B-0105, issued by the Department of the Army, for the replacement and repair of built-up and single-ply roofs at Fort Campbell, Kentucky. The protester contends that the agency should have allowed it to correct a mistake it made in its price for one line item. Correction would have made R.C. Construction the low bidder and, therefore, in line for the award. Award was instead made to General Roofing Company.

We deny the protest.

The IFB required the submission of unit and total prices for 116 estimated quantities of work. Contract award was to be made to the bidder submitting the low aggregate price for all

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of the work. Six bids in the following amounts were received as of the August 24, 1990, bid opening:

General Roofing	\$692,950.00
Commercial Roofing	701,107.50
Brazos Roofing	784,378.00
R.C. Construction	880,434.00
Penn Perry, Inc.	955,966.00
Acme Roofing & Sheet Metal	1,922,060.60

Award was made to General Roofing on the morning of September 12. Later that same day R.C. Construction advised the contracting agency that it had made a mistake in its unit and, consequently, total price on item 44, which involved the installation of fully-adhered single-ply EPDM roofing to an estimated 1,000 square feet (SF) of roof. The bidder stated that its bid contained an obvious and apparent clerical mistake on that item since its unit price of \$225 SF and total price of \$225,000 should clearly have been \$2.25 SF and \$2,250, respectively. It noted that the error in its unit price was obvious from a comparison of the other bidders' prices, which ranged from \$2.00 SF to \$4.05 SF. It also noted that the government had similarly been in error in quoting an estimated unit price of \$260 SF instead of \$2.60 SF.

The contracting agency argues that R.C. Construction's allegation cannot be substantiated from the face of its bid since there was no apparent error in either the unit or the total price and there was no apparent misplacement of a decimal point. Further, it states that the protester's unit price appears to be for a square (100 square feet) rather than a square foot of roofing. The agency points out that since there is no basis for the assumption that there is a proportionate correlation between pricing per square foot and per square--pricing customarily increases per unit when the unit size decreases due to the addition of overhead and general and administrative expenses, the protester may have intended to bid a unit price of other than \$2.25 but for the mistake. Thus, the agency concludes, more than one reasonable interpretation may exist of what the protester intended to bid but for the mistake. The agency also notes that the mistake in the government estimate was a typographical one--the price should have been per square and not per square foot--and thus does not validate or legitimize the protester's alleged mistake.

An unsuccessful bidder who does not allege a mistake until after award must bear the consequences of the mistake unless the contracting officer was on actual or constructive notice of the error prior to the award. PAE GmbH Planning and Constr., B-233823, Mar. 31, 1989, 89-1 CPD ¶ 336. In this

case, we believe that the great disparity between R.C. Construction's price and the other bid prices received on item 44--the protester's price was approximately 56 to 112 times the other prices bid for this item--was sufficient to place the contracting officer on constructive notice as to the possibility of mistake.^{1/}

A bidder may be permitted to correct an alleged mistake where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. FAR § 14.406-3(a). Where such a correction would result in displacing--as here--one or more lower bids, the correction is permissible only if the existence of the mistake and the bid actually intended are ascertainable from the solicitation and the bid itself. George E. Failing Co., B-233207, Feb. 24, 1989, 89-1 CPD ¶ 203; Argee Corp., 67 Comp. Gen. 421 (1988), 88-1 CPD ¶ 482.

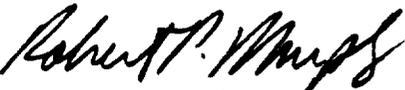
While we agree that a mistake did occur in the protester's pricing of item 44 and that a reasonable interpretation of the mistake could result in the conclusion that the protester intended to bid a price of \$2.25 per square foot, we cannot conclude that only one reasonable interpretation of what the intended price would have been but for the mistake exists. While the rules governing mistakes in bid are intended to permit relief to bidders who make genuine mistakes in their bids, the paramount concern of the rules is the protection of the competitive bidding system. Accordingly, the rules generally may not be used to correct a mistake which renders the bid subject to two reasonable interpretations because the possibility would then exist that the intended bid would not have actually been the low bid. LBM Inc., B-236403, Nov. 30, 1989, 89-2 CPD ¶ 506. Here, the bid schedule had several line items for roofing that required bids on a per square basis. Also, the protester has not rebutted the agency's position that, as a matter of custom, bidding on a per square basis does not correlate with bidding on a square foot basis. As the agency correctly notes, the protester may have inadvertently submitted its item 44 unit price on a per square basis. If such were the case, and the possibility cannot be ignored, it would be reasonable to assume that the conversion of this price to a unit price per square foot would not necessarily result in a unit price of \$2.25. The possibility exists that the error was not in the placement of the decimal point. Therefore, the protester's intended unit price is not clear from the face of the bid and we do not know with any certainty

^{1/} Federal Acquisition Regulation (FAR) § 14.406-1 provides that, after bid opening, a contracting officer shall examine all bids for mistakes and request verification of the bid if he has reason to believe a mistake has been made.

what its correct unit price and total price are, and whether its bid would have been low. The protester's total price as submitted was within the range of prices received and did not, by itself, show the existence of a mistake.

In these circumstances, we conclude that the contracting agency was correct in refusing to permit R.C. Construction to correct its bid so as to make it the low bidder and eligible for the award.

The protest is denied.


for James F. Hinchman
General Counsel