



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Innovative Refrigeration Concepts

**File:** B-242515

**Date:** March 27, 1991

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Roger K. Singh for the protester.  
John R. McCaw, Esq., Federal Aviation Administration, for the agency.  
James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Bid was properly rejected where its price was out of line with the others received and an alleged mistake in bid was not appropriate for correction because it would result in recalculation of the bid after bid opening to include an item not originally considered.

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### DECISION

Innovative Refrigeration Concepts (IRC) protests the rejection of its low bid submitted in response to invitation for bids (IFB) No. DTFA08-90-03014, issued by the Federal Aviation Administration, Department of Transportation.

We deny the protest.

The IFB was for the fabrication of three air-cooled water chillers and at bid opening on November 5, 1990, IRC submitted the low bid of \$67,483. The next low bid was submitted by Trane Company at \$79,444. The government estimate was \$87,625.

In view of the disparity between the bid of IRC, the next low bid and the government estimate, the contracting officer, on November 8, requested IRC to verify its bid. The letter specified that any mistake alleged must be supported by clear and convincing evidence which may include original work sheets used in bid preparation. In addition, the letter requested that the bidder submit technical information concerning the equipment offered.

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On November 28, IRC responded that its bid was not based on providing copper fins in the condensers as required by the specifications. IRC stated that it was obtaining an additional quote from its supplier and indicated that "if the amount is marginal we would prefer to stay with the prevailing bid amount." By letter dated December 3, IRC advised the agency that the copper fins cost an additional \$2,205 per condenser and stated that the "cost" is now \$74,587; an increase of \$7,104 over its original bid. In addition, it submitted a quote dated after bid opening showing the cost of the new copper fins and its original bid calculation sheet which lists the cost of the condenser as \$3,849.

In response, the agency rejected IRC's bid in a letter dated December 14, which stated that the bid was "nonresponsive" apparently because materials submitted by IRC after bid opening concerning the firm's warranty did not, in the agency's view, meet the solicitation requirements.

The protester argues that it properly supported its claim of mistake and that its bid, which as corrected was still low, should have been corrected and accepted. Further, the protester objects to having been required to submit technical information such as that relating to the warranty and states that it in fact agreed to perform in conformance with the terms of the IFB.

It is clear from the record that the contracting officer rejected the bid of IRC because she believed that it was "nonresponsive" based upon the technical information submitted by the protester after bid opening. Since at the time of bid opening there was nothing on the face of IRC's bid, or submitted along with it, which took exception to any of the IFB requirements, we do not believe that the contracting officer had any basis upon which to reject the bid as nonresponsive. Gardner Zemke Co., B-238334, Apr. 5, 1990, 90-1 CPD ¶ 372.

However, while IRC's bid was responsive, it is our view based upon the information in the protest report that the mistake claimed by IRC could not be corrected and that the bid should have been rejected pursuant to Federal Acquisition Regulation (FAR) § 14.406-3(g)(5). That regulation specifies that an agency may reject a bid that is obviously erroneous where the bidder is unable to show that a correctable mistake was made in its bid and the price is unreasonably out of line with the other bids received. See Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ \_\_\_\_\_.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred and the intended price. FAR § 14.406-3(a).

The only evidence submitted by IRC simply shows that it improperly bid on condensers using aluminum fins rather than the required copper fins and that its price must be raised \$7,104 to cover the increased cost of copper fins; there is no evidence of any intended price other than the one submitted as the bid. Thus, the rule permitting bid correction does not apply to a situation where the bidder discovers after opening that its bid is based upon an incorrect premise (here, that aluminum fins were acceptable) since that would allow a bidder to recalculate and change its bid after bid opening to include factors for which the bidder did not intend a precise price when the bid was submitted. L.F. Leiker Constr. Co., Inc., B-238496, May 4, 1990, 90-1 CPD ¶ 453. Accordingly, IRC's bid could not be corrected and since it was obviously erroneous, rejection pursuant to FAR § 14.406-3(g)(5) was proper. See Martin Contracting, B-241229.2, supra; 42 Comp. Gen. 717, 725 (1963).

The protest is denied.

  
for James F. Hinchman  
General Counsel