



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Service Corporation

File: B-246159

Date: February 14, 1992

David L. Ebbett for the protester.

Millard F. Pippin, Department of the Air Force, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Upward correction of low bid was proper where worksheets clearly showed that, due to bidder's failure to multiply unit prices by total number of units, the per unit labor and material costs to repair bathrooms was factored into the bid for one unit only, and erroneously omitted for the remaining 39 units.

DECISION

International Service Corporation (ISC) protests the award of a contract to Dar-Con Corporation under invitation for bids (IFB) No. F65501-91-B-0035, issued by the Department of the Air Force for the repair of bathrooms and basements in the Denver Military Family Housing units at Elmendorf AFB, Alaska.

We deny the protest.

The solicitation bid schedule requested three prices: Item 0001 for the repair of 120 bathrooms (three bathrooms in each of 40 housing units); Item 0002 for the repair of basements in the 40 units; and a total price, consisting of the sum of the prices for Items 0001 and 0002. Five bids were received, including the two lowest bids submitted by Dar-Con and ISC. Those bids were as follows:

	<u>Dar-Con</u>	<u>ISC</u>	<u>Gov. Estimate</u>
Item 0001	\$192,756	\$318,126	\$421,393.82
Item 0002	\$ 50,580	\$ 81,300	\$ 42,769.14
TOTAL	\$243,336	\$399,426	\$464,162.96

After evaluation of bids, the contracting officer requested that Dar-Con verify its bid since it was substantially lower than ISC's next low bid and the government estimate. Dar-Con responded that it had made a mistake in the calculation of its bid and provided as evidence its original worksheets and two recapitulation sheets, one which totals the base bid for item 0001 (Recap 1), and one which computes profit/overhead and bonding costs on the base bids for items 0001 and 0002 and then calculates its final bid (Recap 2).

Dar-Con claimed that the mistake lay in its price for item 0001. Specifically, Dar-Con explained that in the process of computing its bid for item 0001, it prepared four worksheets over which it priced out all labor and materials involved in repairing the bathrooms in one unit. The total estimate for each sheet (\$449, \$960, \$948, and \$927 respectively), each representing part of the work to be done in a unit, was entered onto Recap 1, but erroneously without first multiplying each figure by the 40 units to be repaired. Hence, the bid included the cost of labor and materials necessary to repair the bathrooms in only one unit, a total of \$3,284, whereas it should have included each worksheet total multiplied by 40 units, which would have resulted in a total of \$131,360. Therefore, \$128,076 (\$3,284 multiplied by 39 units), was erroneously omitted from Dar-Con's bid.

Dar-Con maintained that the omission created further errors in its bid calculation because it had calculated and added both a 20 percent profit/overhead figure into its bid, and its bond cost, which was based on a percentage of the total bid. Therefore, Dar-Con claimed an additional correction of \$25,615 (20 percent of \$128,076) for profit/overhead, and \$2,305 for its additional bond cost (at a rate of \$2,500 for the first \$100,000, and 1.5 percent for amounts above that, the additional amount was 1.5 percent of the correction amount plus profit/overhead, \$153,691). Hence, Dar-Con claimed that its bid for item 0001 should have been \$348,752 (\$192,756 plus the \$155,996 correction) and that its total bid should have been \$399,332 (\$348,752 plus \$50,580 for item 0002).

The contracting officer determined that there was a mistake in Dar-Con's bid and referred the matter to the Air Force Contract Law Center (AFCLC) at Wright-Patterson AFB, Ohio, for a final determination. The AFCLC determined that clear and convincing evidence had been presented both as to the existence of a mistake and as to the bid actually intended, pursuant to the requirements of Federal Acquisition Regulation (FAR) § 14.406-3(a). Therefore, the agency allowed Dar-Con to correct its bid upward to \$399,332, and made award to Dar-Con on September 30. ISC filed this

protest on October 9. Notice to proceed with performance has been withheld pending resolution of the protest.

ISC contends that correction was improperly allowed in this case. It claims that Dar-Con has not sufficiently established the existence of a mistake or its intended bid. Moreover, it maintains that, due to the closeness of the corrected bid to the second low bid, such correction compromises the integrity of the competitive bidding process.

Upward correction of a low bid to an amount that is still lower than the next low bid is proper where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. FAR § 14.406-3(a); Consolidated Duct Sys., Inc., B-241402; B-241402.3, Feb. 6, 1991, 91-1 CPD ¶ 125. 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. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and 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 there is no reasonable basis for the decision. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606.


We find that the documentation supplied by Dar-Con clearly and convincingly establishes both the alleged mistake and the amount of the intended bid. Dar-Con has provided each of the four worksheets used to detail and price out the labor and materials cost of the bathroom repair. Upon examination, they clearly reflect a per unit pricing scheme. One worksheet details and prices the demolition work to be done in the three bathrooms of one unit. The remaining three worksheets outline and price the new work to be accomplished in each of the three bathrooms in the unit, which are identified by their size or location in the unit, e.g., 3/4 bath-2nd floor. Recap 1 shows the four worksheet totals entered as the first four contractor line items. Each of the four figures is the per unit price. There is no other figure for this work elsewhere on the sheet. Every other line item figure factored into the item 0001 base bid is accounted for. It is clear from these worksheets that the price for 39 units was omitted from the bid due to the failure to multiply the unit prices by a factor of 40, the number of units.

The intended bid is just as clear. The worksheets plainly indicate that Dar-Con's intended labor and material price per unit was \$3,284, so the total understated amount can be

determined by multiplying this amount by 39, which results in a product of \$128,076. In addition to that amount, it is clear from the worksheets that the error in item 0001 had an effect on the calculation of the profit/overhead and the cost of bonding for the final bid. Recap 2 shows that, once amounts were established for items 0001 and 0002, an additional 20 percent of each was calculated and added to each bid amount. Where a mistake has a specifically calculable effect on the bid calculation and that effect can be determined by a formula evident from the worksheets, the intended bid may be ascertained by taking into account the effects of the error on other bid calculations based on the mistaken entry. Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571. The same 20 percent factor thus properly may be added to the correction amount. By the same token, since Recap 2 shows how the bond rate was figured on the total of items 0001 and 0002 after the 20 percent figures were added (as explained above), 1.5 percent of the correction amount (including the additional profit/overhead) should be added to the corrected bid.

The fact that the corrected bid, \$399,332, is within \$94, or .0235 percent, of ISC's second low bid, \$399,426, does not preclude correction under the circumstances of this case. While, generally, the closer the intended bid comes to the next low bid, the more difficult it is to establish the amount of the intended bid, and the closer we will scrutinize the workpapers and the mistake claim, Vrooman Constructors, Inc., supra, there is no particular percentage or gross dollar amount at which bids are too close to allow correction, so long as clear and convincing evidence of the mistake is provided. See, e.g., Ogden Allied Eastern States Maintenance, B-239550, Aug. 28, 1990, 90-2 CPD ¶ 166; Vrooman Constructors, Inc., supra (correction allowed in each case despite proximity of less than 1 percent to the next low bid). As we have stated, close examination of the workpapers clearly shows that Dar-Con's bid was mistaken, the manner in which the mistake occurred, and the intended bid. Correction therefore is permissible.

The protest is denied.


for James F. Hinchman
General Counsel