

Comptroller General
of the United States

Washington, D.C. 20548

Curcio 147203

Decision

Matter of: Interstate Construction, Inc.

File: B-248355

Date: August 6, 1992

Robert J. Marks, Esq., Marks & Golia, for the protester.
Robert L. Leslie, Esq., McInerney & Dillon, for Monterey
Mechanical Company, an interested party.
Paul M. Fischer, Esq., Kimberly L. Frye, Esq., and Richard
L. Spector, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest that agency improperly permitted low bidder to correct a mistake in its bid is denied where the agency reasonably concluded that the bidder presented clear and convincing evidence that it mistakenly included a \$60,000 subcontractor quotation in its bid as \$600.

DECISION

Interstate Construction, Inc. protests the award of a contract to Monterey Mechanical Company under invitation for bids (IFB) No. N62474-91-B-0041, issued by the Department of the Navy for the replacement of JP-5 valves at Point Molate, Richmond, California. Interstate asserts that the Navy improperly permitted Monterey to correct a mistake in its low bid.

We deny the protest.

The IFB was issued on August 26, 1991, and amended on September 5. The IFB required bidders to submit a lump sum bid to perform all work required by the solicitation. At bid opening on September 26, seven bids were submitted. Monterey submitted the low bid of \$389,389 and Interstate submitted the next low bid of \$484,900. The day after bid opening Monterey notified the Navy that its bid contained a mistake and requested permission to correct it. Monterey asserted that in calculating its lump sum bid it included a figure of \$600 for its electrical subcontractor rather than \$60,000, the actual amount quoted by the subcontractor. Monterey requested that its bid be corrected to include the difference, \$59,400. Monterey also alleged that this

mistake had an impact on the amount it included in its bid for profit, bonds and insurance because these amounts were computed as a percentage of the subtotal of its bid and the electrical quotation was part of that subtotal. Monterey therefore requested that its bid also be adjusted upward to include the additional amounts for profit, bonds and insurance that would have been included if the correct amount for the electrical subcontractor had been initially included in its bid.

To support its request for correction, Monterey submitted three subcontractor quotations for the electrical portion of the work. The low subcontractor quotation was submitted to Monterey by L.C. Jones in the amount of \$50,000. Monterey also submitted a copy of Jones's worksheets which showed that Jones's total bid for the electrical portion of the work was calculated as \$60,000. Finally, Monterey submitted a copy of its own computer worksheets. These worksheets were broken down into the various elements of work that would be required to perform the contract. Next to each item of work were columns for the quantity required, and labor, material, subcontractor, equipment, other, and total costs. Different columns were filled in for each element of work. For the electrical portion of the work \$600 was inserted in the subcontractor column; no other column was filled in. Monterey's worksheets also included amounts for profit, sales tax, bonds and insurance based on a stated percentage for each of the costs of performing the contract.

Based on the information submitted, the Navy found that Monterey had submitted clear and convincing evidence of its intended bid; in this regard, the Navy noted that its own estimate for the electrical work was \$84,424. The Navy thus permitted Monterey to correct its bid by \$65,052. The correction included \$59,400 (the difference between \$60,000, the actual electrical subcontractor bid, and \$600, the amount included in the bid for the electrical work) as well as additional amounts for insurance, profit and bond premium based on the percentages in the worksheets that were included for these items as computed once the additional amount for electrical work was included. In total, Monterey was permitted to correct its bid to \$454,441.

Interstate protests that the Navy improperly permitted Monterey to correct its bid because the information provided by Monterey in support of its request for correction did not provide clear and convincing evidence of its intended bid. Interstate points to several aspects of Monterey's supporting documentation as indicating that the documents are not reliable enough to constitute clear and convincing evidence of Monterey's intended bid. Specifically, Interstate complains that the alleged Monterey employee who received and annotated the telephone quotation submitted by

L.C. Jones Electrical is not identified. Interstate also questions whether the quotation, which was annotated as received at 2:18 p.m., was in fact received at that time; according to Interstate, the figure 18 is bolder and darker than the figure 2, and another entry is partially visible but illegible.¹

Interstate also argues that since the computer run as shown on the worksheets that Monterey submitted in support of its request for correction occurred at 2:21 p.m. on September 26, the bid opening date, if Jones's quotation was not received before 2:21 p.m., Monterey could not have relied on it in preparing the bid. In any case, Interstate questions whether Monterey would have performed a computer run of its bid at 2:21, within 3 minutes of receipt of the quotation, when the bid was due at the agency at 2:30. Finally, Interstate questions the computer worksheets submitted by Monterey because they are not sworn to as original documents. Interstate also complains that Monterey should not be permitted to correct its bid because the corrected Monterey bid is only 6 percent lower than Interstate's bid.²

An agency may permit upward correction of a low bid prior to award if there is clear and convincing evidence showing a mistake was made, the manner in which the mistake occurred,

¹The document at issue consists of a facsimile cover sheet with Jones's letterhead, showing the date and time of bid opening, and an attached sheet listing the work elements. The cover sheet has a handwritten notation of \$60,000. The same price is entered again on the attached sheet, in what appears to be the same handwriting. The notation to which the protester refers appears on the second page, next to the price entry, and provides in relevant part as follows:

"CONFIRMED

2:18 pm
BY TELEPHONE"

Underneath, the notation is signed by either "Carl W." or "Carl N."

²Interstate initially protested that Monterey's mistake was that Monterey priced the contract based on its intent to use valves that did not conform to the requirements of the solicitation and that the Navy improperly permitted Monterey to adjust its bid to include the additional cost of using conforming valves. The report submitted by the agency shows no such alleged mistake and Interstate has not pursued this specific allegation. Accordingly, we have not considered this basis of protest.

and the intended price. 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 it. Workpapers may constitute clear and convincing evidence if they indicate the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence. Ogden Allied E. States Maint., B-239550, Aug. 28, 1990, 90-2 CPD ¶ 166.

Here, as noted above, in support of its claim for correction Monterey submitted its computer worksheets and the subcontractor quotations it received for the electrical work while preparing its bid. Based on our review of the evidence, we find no basis to conclude that the Navy's decision to permit Monterey to correct its bid was unreasonable.


The computer worksheets clearly show that Monterey inserted \$600 in the subcontractor column for the electrical work. Given that the government estimate for the electrical work is more than \$80,000, it was quite reasonable for the Navy to conclude that Monterey had made a mistake on its worksheets. Likewise, the agency reasonably concluded that Monterey intended to use Jones's quotation in view of the similarity between the figure entered on the worksheet and the quotation (\$600 and \$60,000), and the fact that Jones's quotation was the lowest one received for the electrical work. It also was reasonable for the Navy to conclude that Monterey would have applied the percentages in the worksheets for bonds, profit and insurance to the entire \$60,000, since it is clear from the worksheets that this is how Monterey calculated the rest of its bid.

While Interstate questions the intended corrected bid because Monterey's workpapers are not sworn to, there is no requirement that workpapers submitted in support of a request for bid correction be sworn to. See id. Nor does that fact that the person who annotated the quotation is not identified call into question the quotation. Further, insofar as Interstate asserts that the figure 18 in the notation 2:18 is bolder and darker than the figure 2, it is clear that the figure 1, while darker, is not thick enough to be covering any number between 0 and 9; thus, at worst, the figure 8 is covering up a different number. Even if the figure 8 was an attempt to cover a 9, that would mean that the quotation came in at 2:19 rather than 2:18; this is still before the 2:21 computer run and before the 2:30 bid opening. Accordingly, we have no basis on which to conclude that Monterey did not rely on the quotation in preparing its bid. Interstate's speculation as to whether Monterey would have performed a computer run on its worksheets only

9 minutes before bid opening does not warrant challenging the reliability of the worksheets. On the contrary, given that subcontractor quotations often are received up to the last minute, it is not unusual that Monterey would have updated its worksheets as close as possible to the time set for bid opening. Accordingly, we have no basis to question the reliability of the documents Monterey submitted to demonstrate its intended bid.

Insofar as Interstate argues that Monterey's corrected bid is only 6 percent lower than Interstate's bid, this margin is not so small as to preclude upward correction. See Shoemaker & Alexander, Inc., B-241066, Jan. 15, 1991, 91-1 CPD ¶ 41.

The protest is denied.


for James F. Hinchman
General Counsel