



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Tri-State Consultants
File: B-250700
Date: December 22, 1992

James L. Lester, Esq., Patton, Boggs & Blow, for the protester.
Craig R. Schmauder, Esq., U.S. Army Corps of Engineers, for the agency.
Mark C. Speight, Esq. and Jerold D. Cohen, 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 bidder presented clear and convincing evidence that it mistakenly included two items in its bid at \$12,000 each instead of \$120,000 each.

DECISION

Tri-State Consultants protests the award of a contract to Cherokee, Inc., under invitation for bids (IFB) No. DACA21-92-B-0051, issued by the U.S. Army Corps of Engineers for dam modifications at Fort Gordon, Georgia. Tri-State asserts that the Corps improperly permitted Cherokee to correct a mistake in its low bid.

We deny the protest.

The IFB required a bidder to enter a price for each of 80 listed items of work, and a total bid. Shortly after bid opening, Cherokee, the low bidder at \$1,546,865, notified the Corps that the bid contained a mistake. Cherokee asserted that in calculating the total bid it included \$12,000 each for bid items 4 and 24, rather than the intended amount of \$120,000 each. Cherokee requested that it be allowed to correct the bid to \$1,762,865, reflecting the difference of \$216,000. The next low bid was the protester's, \$1,878,448.

To support the request for correction, Cherokee submitted the subcontractor quotation it used as the basis of its price for the work specified under items 4 and 24. Items 4 and 24 involve the removal of water from the Upper Leitner

Dam and the Leitner Dam. The subcontractor, the Griffin Dewatering Corporation, quoted a price of \$48,746 for initial setup at each site and \$735 a day during operation of the water removal system. Cherokee also submitted a copy of its worksheets and a sworn statement from the company's estimator explaining how he calculated prices for items 4 and 24.

According to the sworn statement, the estimator used the price quoted by Griffin as the basis for the bid entries for the two items. The estimator states that he estimated that the system would be operated for 70 days at each site at a cost of \$735 per day, or \$51,450 per site. He added the initial setup cost (\$48,746) and the operating cost (\$51,450) to reach \$100,196 per site. The estimator then added 10 percent overhead and 10 percent profit to arrive at a price of \$121,237, which he rounded to \$120,000 for each site.

Based on the information submitted, the Corps found that Cherokee had submitted clear and convincing evidence of its intended bid. The Corps noted that its own estimate for item 4 was \$90,429, and for item 24 was \$98,753. The other bidders' prices ranged from \$65,000 (the protester) to \$133,000 for item 4 and from \$40,000 (also the protester) to \$224,000 for item 24. The Corps then permitted Cherokee to correct the bid by \$216,000.

Tri-State argues that the information Cherokee provided to support the request for correction is not clear and convincing evidence of the allegedly intended bid. The protester complains that "Cherokee's evidence in this matter consists of undated, handwritten, incomplete work sheets, a single subcontractor quote, and the affidavit of the estimator made more than a week after the bid opening." Tri-State further complains that "[t]he evidence does not include any of the other dewatering quotes received by Cherokee, any other bid preparation documents supporting the existence of the mistake, or any documents as to the intended bid amount."

An agency may allow upward correction of a low bid before award if there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.406-3. Since the procuring agency has the authority to correct such mistakes, 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. Ogden Allied Eastern States Maintenance, B-239550, Aug. 28, 1990, 90-2 CPD ¶ 166. Workpapers may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid;

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they must, however, be in good order, with no other evidence contradicting them. Interstate Construction, Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86.

Based on our review of the evidence, we find no basis to question the Corps' decision to allow Cherokee to correct the bid. Cherokee's worksheets, which include \$120,000 each for items 4 and 24, appear to be in good order, and the similarity to the figure in the bid (\$12,000) supports a conclusion that the firm made a transposition error in compiling its bid. In this respect, although the protester is correct that the worksheets are undated, there is no requirement that worksheets be dated. Fortec Constructors, B-203627, Feb. 16, 1982, 82-1 CPD ¶ 132. The subcontractor quote Cherokee claims to have used to calculate its bid also supports correction, and we find reasonable the explanation for the error set out in the estimator's sworn statement. Finally, a price of \$120,000 for each of items 4 and 24 is in line with the Corps' own estimate of more than \$90,000 to remove water at each of the sites, and with the prices bid by the other firms for these items.¹

In sum, we think the Corps reasonably concluded that Cherokee's bid was mistaken and that correction was proper.

The protest is denied.

for Seymour Efron
James F. Hinchman
General Counsel

¹The protester also asserts that Cherokee's corrected bid should have been 20 percent more than the amount of the correction. This assertion is based on the fact that Cherokee's worksheets included a 20 percent markup for "Mobilization and Preparatory Work." However, even with this (unclaimed) added cost, Cherokee would still be the low bidder. See Department of Interior--Mistake in Bid Claim, B-222681, July 23, 1986, 86-2 CPD ¶ 98.