



Comptroller General
of the United States

Washington, D.C. 20548

150042
Pietroville
12989

Decision

Matter of: Aleutian Constructors, a Joint Venture

File: B-253276

Date: September 8, 1993

K.D. Christenson for the protester.
Scott McCaleb, Esq., and Lester Edelman, Esq., Department of the Army, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The procuring agency properly allowed the upward correction of the awardee's low bid where the agency reasonably concluded that the awardee's work papers presented clear and convincing evidence of a mistake in the awardee's bid and the awardee's intended bid price.

DECISION

Aleutian Constructors, a joint venture, protests the decision of the Department of the Army, United States Army Corps of Engineers to permit Red Samm Construction, Inc. to correct an alleged mistake in its low bid under invitation for bids (IFB) No. DACA85-93-B-0002, issued by the Corps for the construction of a maintenance shop and facility at Shemya Air Force Base, Shemya, Alaska.

We deny the protest.

The bid schedule consisted of nine contract line items (CLIN) and two additive CLINs, providing for the construction of a maintenance shop and facility. Bidders were required to enter a price for each CLIN, and were informed that a single award would be made to the bidder with the lowest total price for all CLINs.

Red Samm submitted the low bid of \$8,488,000, and Aleutian the next low bid of \$10,017,000. The government's estimate for the contract work was \$11,295,000. Shortly after bid opening, Red Samm advised the agency that it had discovered a bid mistake in the amount of \$400,000. Red Samm stated that it understated its bid "margin" by \$400,000. Red Samm requested that the agency permit it to upwardly adjust its

bid price by \$400,000, but if bid correction was not possible, it reserved the right to seek withdrawal of its bid.

In support of its request for an upward bid price adjustment, Red Samm provided the Corps with its original bid work papers, consisting of an "estimate spread sheet," which included Red Samm's direct and indirect costs, and a "bid adjustment sheet," which provided adjustments for various direct material items, margin, and "labor/s.t.s." Red Samm also submitted affidavits from its vice president, controller, and project manager, that attest to and authenticate the bid work papers and explain how the bid mistake occurred.¹ Red Samm also provided documentation to demonstrate that it did not have a standard procedure for making bid adjustments.

Red Samm explained that it included a \$600,000 margin in calculating its preliminary bid price. On bid opening day, the awardee's president/owner requested the bid preparers to adjust the bid to reflect a total \$800,000 margin. On that date, Red Samm's project manager completed the bid adjustment sheet that included 11 adjustments, upward or downward, to Red Samm's bid, including an adjustment for its margin. Regarding the margin, the bid adjustment sheet included the following entry:

ITEM	IN BID	CHANGE TO	ADJUSTMENT
			Add \ \ Deduct-
Margin	\$600,000	\$800,000	\ \ -200,000

In its affidavits, Red Samm's representatives stated that the \$200,000 subtraction from its margin was an error since the bidder, as documented in its bid adjustment sheet, intended to increase its margin by \$200,000. Thus, by mistakenly inserting the \$200,000 figure in the deduct adjustment column, Red Samm understated its bid price by \$400,000. If the \$200,000 figure was inserted into the proper add column, Red Samm argues, its original \$600,000 margin would have been increased to \$800,000, as intended, to arrive at its intended bid of \$8,888,000.

The work papers show that a net adjustment was calculated on the bid adjustment sheet by adding or subtracting the applicable adjustments shown on the sheet. In calculating this net adjustment, the project manager subtracted \$200,000 for the margin adjustment. The net adjustment was then subtracted from the bidder's total direct costs on the estimate spread sheet, which yielded a total direct cost of

¹In response to our request, Red Samm also submitted an affidavit from its president/owner.

\$7,888,000. To this amount, Red Samm's original bid margin of \$600,000 was added to obtain the final bid price of \$8,488,000 that was submitted on the bid.

Based upon the information provided, the Corps determined that Red Samm had established by clear and convincing evidence the existence of a bid mistake and the bid actually intended. Accordingly, the Corps allowed Red Samm to upwardly adjust its bid by \$400,000. This protest followed.

An agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation § 14.406-3(a). For an upward adjustment of a low bid, work papers may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id.; Bush Painting, Inc., B-239904, Aug. 30, 1990, 90-2 CPD ¶ 188. Whether evidence of the intended bid amount meets the clear and convincing evidence standard is a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120.

Aleutian admits that Red Samm's work papers establish the existence of a bid mistake but argues that it cannot be established with certainty that Red Samm intended to add \$200,000 to its margin or what Red Samm intended for its bid price. In this regard, Aleutian contends that Red Samm's work papers do not establish with certainty how Red Samm calculated its final CLIN prices from the component costs and margin.²

From our review of the record, we find no basis to conclude that the Corps acted unreasonably in finding that Red Samm had established both the existence of a bid mistake and its intended bid price by clear and convincing evidence. As shown above, the awardee's bid adjustment sheet states that Red Samm intended to change its preliminary bid margin from \$600,000 to \$800,000 but Red Samm deducted \$200,000 rather than adding this amount to its bid. This resulted in a \$400,000 understatement, as explained by Red Samm. While Aleutian argues that the bid adjustment sheet is susceptible of another interpretation, that is, that it is not the

²Aleutian also challenges Red Samm's work papers on the basis that the work papers do not indicate that they were prepared prior to bid opening. The fact that the work papers are undated does not demonstrate that they were not prepared prior to bid opening as represented by Red Samm in its affidavits. See Fortec Constructors, B-203627, Feb. 16, 1982, 82-1 CPD ¶ 132.

\$200,000 deduction that is in error, but the indication that Red Samm intended to change its bid margin to \$800,000, this interpretation of the document is implausible. The unambiguous language of the bid adjustment sheet is that Red Samm intended an \$800,000 margin in its bid. Red Samm's sworn explanations of its bid mistake are consistent with the language of the bid adjustment sheet.

The effect of the awardee's erroneous understatement of its bid margin is also mathematically calculable in Red Samm's bid estimate spread sheet. That is, the net bid price adjustment, as calculated on the bid adjustment sheet, was then applied to Red Samm's final bid price calculation, resulting in a \$400,000 understatement in its intended bid price. Thus, in our view, Red Samm's work papers show with clear and convincing evidence that Red Samm intended to bid \$8,888,000.

It is true, as Aleutian asserts, that Red Samm's work papers do not establish with certainty how Red Samm calculated its prices bid for each CLIN or how Red Samm determined to allocate its intended margin among the various CLINs.³ We do not find this to be significant in this case. The IFB provided for a single award based upon the all the CLINs and there is no indication that not all of the CLINs will be performed to complete the required construction services. Given the unitary nature of the project, as established by the IFB, we think that the fact that Red Samm's total intended bid price can be calculated with certainty is sufficient for the agency to reasonably find clear and convincing evidence of Red Samm's intended bid. See MKB Constructors, Joint Venture, B-250413, Jan. 15, 1993, 93-1 CPD ¶ 50, recon. denied, B-250413.2, June 8, 1993, 93-1 CPD ¶ 441 (correction of a price omission in one CLIN in the low bid was proper given the unitary nature of bid schedule).

We deny the protest.



for James F. Hinchman
General Counsel

³Aleutian states that its final CLIN prices were calculated by "backing" from its total adjusted bid price.