



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: ACS Construction Company, Inc. of Mississippi

File: B-257775

Date: November 9, 1994

Andrew J. Kilpatrick, Jr., Esq., for the protester.
Charles M. Powers, for R.C. Construction Company, Inc., an interested party.
Newton L. Klements, Esq., and William A. Hough, Esq., Office of the Chief of Engineers, Department of the Army, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency determination allowing a bidder to correct a mistake (failure to include the cost of certain steel hooks) in its low bid prior to award was proper where the agency reasonably determined that clear and convincing evidence established the existence of mistake, the intended bid price can be ascertained within a narrow range of uncertainty, and the corrected bid remains low as corrected.

DECISION

ACS Construction Company, Inc. of Mississippi protests the award of a contract to R.C. Construction Company, Inc. under invitation for bids (IFB) No. DACA21-94-B-0063, issued by the United States Army Corps of Engineers for the revitalization of the brigade area barracks at Fort Bragg, North Carolina. ACS Construction contends that the agency improperly permitted R.C. Construction to correct a mistake in its low bid.

We deny the protest.

Three bids were received in response to the IFB by the June 28, 1994, bid opening date. R.C. Construction submitted the low bid of \$8,788,000 at bid opening; ACS Construction submitted the next low bid of \$9,118,000; and ECI Construction submitted the highest bid, at \$9,888,000. The government estimate was \$9,251,900.

The day after bid opening, R.C. Construction submitted a letter to the agency stating that its bid contained an error in that it failed to include the price of certain steel parachute load bar hooks that had been quoted from a supplier. R.C. Construction explained that in preparing its bid, it used two separate subcontractors' quotations, the first of which did not include the parachute load bar hooks in its lump-sum steel price, and the second of which provided separate pricing for parachute load bar hooks (at \$225,750) and parachute hook detail (at \$74,000). R.C. Construction stated that it intended to use the first subcontractor quotation for the bulk of its steel requirements, and intended to use the second subcontractor's quotation for the items (the above hooks and detail) excluded from the first subcontractor's quotation. The firm advised, however, that it mistakenly only included the second subcontractor's quotation of \$74,000 for the hook detail and inadvertently failed to include that subcontractor's quotation of \$225,750 for the parachute load bar hooks (R.C. Construction stated that in the final preparation of its bid shortly before bid opening, the firm misread the second subcontractor quotation of \$74,000 as including all hooks). R.C. Construction claimed that its intended base bid, had it included the omitted hooks, would be \$239,295 higher (based on its subcontractor's quote of \$225,750 for the item plus an additional 6 percent allowance for North Carolina sales tax), for a total bid price of \$9,027,295 (instead of \$8,788,000). The requested correction would cause R.C. Construction's bid to be \$90,705 lower than the next low bid (\$9,118,000) submitted by ACS Construction.

R.C. Construction's request for correction included copies of the two subcontractor quotations, its bid workpapers (including an adding machine tape and a computerized printout of bid component items), and a notarized statement as to the nature of the mistake. The contracting officer, after receiving confirmation from agency legal counsel, determined that the documents submitted by R.C. Construction presented clear and convincing evidence of a mistake. The agency compared R.C. Construction's bid papers, the subcontractor's quotations, and the government estimate for the steel. This comparison showed that when the requested amount was added to R.C. Construction's price for the steel work, its price would increase from \$1,060,461 to \$1,299,756. In light of the firm's explanations and documentation and since the government's estimate for the steel was in excess of \$1.3 million, the agency concluded that R.C. had clearly and convincingly shown that the firm had mistakenly not bid enough to account for the work required by the contract.

The agency's review of the documentation and the bid, as submitted, however, caused the agency to initially question the requested correction amount since it failed to include the same markups that were used by the firm for other bid items, such as insurance, overhead, profit and bond; such additional markups would add another \$9,730 to R.C.'s requested correction amount. The agency determined that the addition of these markups would cause R.C.'s corrected bid to be \$80,975 lower than ACS Construction's second low bid. Since R.C. Construction's bid would be lower than the next low bid whether the bid was corrected in the amount requested or the higher amount (which would include the agency-calculated additional markups), the agency decided correction of the bid to the amount requested (i.e., an addition of \$229,295) was proper since only a narrow range of uncertainty existed as to the actual intended amount. Award was made to R.C. Construction on June 30, in the amount of \$9,027,295 (which is approximately 1 percent lower than the protester's next low bid price).

ACS Construction protests the agency's determination to allow the correction of the awardee's bid. The protester contends that any mistake in R.C. Construction's bid was the result of the firm's failure to properly interpret specifications and subcontractor quotations, and that it should not be allowed to be corrected. The protester states that R.C. Construction has not presented the required clear and convincing evidence of its intended bid so as to allow correction.


As provided in Federal Acquisition Regulation (FAR) § 14.406-3(a), 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. American Restoration, Inc., B-250796, Jan. 11, 1993, 93-1 CPD ¶ 32. In considering the upward correction of a low bid, 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. McInnis Bros. Constr., Inc., B-251138, Mar. 1, 1993, 93-1 CPD ¶ 186. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. Precon Constr. Co., B-255294; B-255294.2, Apr. 6, 1994, 94-1 CPD ¶ 239; M. A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296. Correction may be allowed, even where the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Id.

We find that the agency reasonably determined that R.C. Construction's supporting documentation meets this standard. Specifically, R.C. Construction submitted the two subcontractor quotations, which formed the basis for its original bid as shown on its workpapers. The workpapers support R.C. Construction's notarized affidavit's explanation that the firm used the first subcontractor's quotation for a lump-sum steel price which excluded both the load bar hooks and detail separately priced on the second subcontractor's quotation and that the firm added the \$74,000 quotation from the second subcontractor for the hook detail, but failed to include the second subcontractor's quotation for the balance of the necessary load bar hooks in its price calculations. Since it is undisputed that the load bar hooks are necessary to perform the work, it is clear that R.C. Construction must have intended to bid the hooks.

Given that R.C. Construction's total steel price was lower than the government estimate in approximately the same amount as the mistaken omission, and the fact that the supporting workpapers show that no amount was included in the bid for the load bar hooks, we think the agency reasonably concluded that R.C. Construction's documentation clearly evidenced a mistake. Southern Technologies Inc., B-256190, May 23, 1994, 94-1 CPD ¶ 321.

Further, only a narrow range of uncertainty exists here as to the actual intended amount for the omitted hooks; R.C. Construction's bid remains low whether the firm's requested correction amount or the agency's calculation (including markups) of the upper end of this range of uncertainty is added to the original bid. Accordingly, we think that the agency reasonably determined that R.C. Construction's evidence of its mistake and intended bid price was clear and convincing, and that the upward correction of the firm's bid was appropriate. Southern Technologies Inc., supra; Precon Constr. Co., supra; R.L. Lee Constr., B-255214, Feb. 7, 1994, 94-1 CPD ¶ 83.

The protest is denied.


 for Robert P. Murphy
 Acting General Counsel