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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

50501

FILE: B-182698

DATE: February 4, 1975

MATTER OF: R. J. McCarthy Co., Inc.

DIGEST:

While GAO has right of review with respect to bid correction after bid opening but prior to award, it will not question administrative determination permitting correction unless such determination has no reasonable basis. Therefore, correction, pursuant to FPR § 1-2.406-3(a)(2) on basis of clear and convincing evidence being submitted, establishing both the existence of mistake and bid actually intended, will not be disturbed where such determination was reasonable and relative standing of bids remains unchanged and corrected bid remains low.

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On August 26, 1974, specification No. 100C-1313 was issued by the Bureau of Reclamation, Department of the Interior (Interior), for the relining of three reservoirs at the Chief Joseph Dam Project near Wenatchee, Washington. Bid opening was held at 10:00 a.m. on September 26, 1974. Four bids were timely received and ranged from \$86,458.50 to \$198,715.50. The Government's cost estimate for this project was \$124,283.20.

The low bidder, Cusicks, Inc. (Cusicks), notified the Project Construction Engineer on September 27, 1974, that errors had been discovered in its bid. Cusicks contended that due to the "hectic environment" of its office the day prior to the opening date, its bid was not checked closely and errors were not detected. Cusicks then submitted its worksheets used in the preparation of its bid, which were certified as originals, and they revealed that the alleged errors had occurred in the calculation of prices for item No. 3 (850 cu. yards of concrete) and item No. 6 (3,475 lin. ft. of type H rubber waterstop). Specifically, Cusicks claimed that when the final bid calculations were performed, the unit price of \$38.00/cu. yd. as shown on the worksheet for placing concrete under item No. 3 was misread and a unit price of \$8.00/cu. yd. was used erroneously. In calculating a unit price for item No. 6, Cusicks claimed that

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the unit price of \$.70/lin. ft. for the waterstop and welding/cutting operations, as listed on the worksheet, was misread and a price of \$.20/lin. ft. was used instead.

Subsequently, by letter dated October 4, 1974, Cusicks submitted additional information on the claimed mistakes as well as its intended bid. Another error was also disclosed in the calculation of a unit price for item No. 6. In preparing a material cost for the welding and cutting operation, the bidder mistakenly used a unit price of \$.10/lin. ft. instead of the \$.01/lin. ft. price shown on the worksheet. In summarizing its intended bid, Cusicks calculated new extended prices for items Nos. 3 and 6 by multiplying the difference between the unit prices actually used and those shown on the worksheet by the quantities specified on the bid form. An allowance of 15 percent was added to each of these amounts and the total lump sum was then added to the original extended prices for items Nos. 3 and 6.

When the revised calculations were reviewed by Interior, it was apparent that Cusicks had not corrected its bid in the same manner in which it had been calculated. Therefore, Cusicks was requested to resubmit its corrected calculations using methods consistent with those employed in preparation of its original bid.

In a report on this matter to our Office, Interior states, in pertinent part, that:

"The bidder responded to this request by letter of November 15, 1974. In computing the corrected unit prices for Item Nos. 3 and 6, the bidder recalculated unit prices for each of these items using the correct amounts as shown on its worksheet. In the case of Item No. 3, total costs of \$73,692 were computed and, when divided by the 850 cu. yds. quantity shown on the bid form, the unit cost was calculated at \$89.28/cu. yd. Cusicks claimed that it is company policy to round to the next \$.10 or \$1.00 on percentage and end figures, depending upon the risk involved with the particular item. In this case, the unit price of \$89.28 was rounded to \$90.00/cu. yd. for Item No. 3 which, when extended, results in a total price of \$76,500. For Item No. 6, a total cost of \$15,996 was

calculated and a unit price of \$4.60 was derived by dividing the total cost by the quantity specified in the bid schedule (3,475 lin. ft.). The calculated unit price of \$4.60 for Item No. 6 was not rounded since it involved an even increment of \$.10. The total corrected extended price for Item No. 6 was calculated to be \$15,985 ($\$4.60 \times 3,475$).

"In its letter of November 15, 1974, Cusicks acknowledged a \$.50 error it had made in the extension of its bid price for Item No. 4. Its original total bid included the \$.50 amount. The bidder also agreed to waive a portion of its mistake (5 percent of its original bid) in accordance with the 'Arithmetic Discrepancies and Mistakes in Bids' provisions of the solicitation. In this instance, the amount to be waived is computed at \$4,322.93 (5 percent of \$86,458.50)."

Concurrent with the ongoing correction process of Cusicks' bid, the second low bidder, R. J. McCarthy Co., Inc. (McCarthy), made several inquiries as to the status of the award. On November 14, 1974, McCarthy was orally informed that the claim of error by Cusicks was being reviewed in the Commissioner's Office and that a final determination would be made in that office. McCarthy, however, believed that its bid was the lowest responsible bid offered. Accordingly, by letter dated November 16, 1974, McCarthy protested the making of an award to Cusicks for any amount other than their original bid. McCarthy stated that "Awarding of this contract to Cusicks Inc. with an adjusted price places the integrity of the Bureau's procurement practices in jeopardy."

Interior, after considering all of the information submitted by Cusicks and comparing its bid for items Nos. 3 and 6 with those submitted by other bidders, as well as the engineers estimate, found that there existed "clear and convincing evidence that a mistake in bid was made." Interior, in reaching this conclusion, stated that:

"Based upon a detailed examination of the bidder's worksheets and supporting information, it is apparent

that Cusicks misread unit prices on its worksheet for Item Nos. 3 and 6 which resulted in mistakes for both of these items. Had the unit prices been read correctly, there exists clear and convincing evidence that the unit price bid for Item No. 3 would have been \$90.00/cu. yd. for a total price of \$76,500, and the unit price for Item No. 6 would have been \$4.60/lin. ft. for a total price of \$15,985. In addition, the extended price for Item No. 4 should have been \$13,183.50.

"Accordingly, I hereby determine that there exists clear and convincing evidence that Cusicks did make a mistake. Furthermore, I find that there is clear and convincing evidence as to the intended bid had the mistake not been made. Therefore, pursuant to FPR 1-2.406-3(a)(1) and IPR 14-2.406-3(a), the bid submitted by Cusicks, Inc., may be corrected by changing the unit price bid for Item No. 3 to \$90.00. and the extended amount to \$76,500, changing the unit price bid for Item No. 6 to \$4.60 and the extended amount to \$15,985, changing the extended amount for Item No. 4 to \$13,183.50 and the total bid amount to \$119,683.50. The bidder has agreed to waive \$4,322.93 of its mistake and this amount shall be deducted in accordance with the provisions of the provision entitled 'Arithmetic Discrepancies and Mistakes in Bids' of the bid schedule. The corrected bid will still remain the lowest bid received."

Given this position, Interior awarded the contract to Cusicks on December 20, 1974, in the corrected amount of \$119,683.50. Award was made pursuant to § 1-2.407-8(b)(4) of the Federal Procurement Regulations (FPR) (2d. ed. amend. 68, January 1970).

In regard to an alleged error in bid, our Office has held that to permit correction prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. See 49 Comp. Gen. 480, 482 (1970); Matter of Ace-Federal Reporters, Inc., B-181451, November 6, 1974; B-173031, September 17, 1971.

The same basic requirements for the correction of a bid are found in § 1-2.406-3(a)(2) of FPR. The authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. Although the General Accounting Office retains the right to review such administrative determinations, our Office will not question a factual determination permitting correction unless there is no reasonable basis for such determination. 53 Comp. Gen. 232 (1973); B-178593, October 10, 1973.

It is our opinion that the determination made with regard to the fact that Cusicks had established its mistakes and intended bid price through clear and convincing evidence was reasonable. The worksheets submitted clearly establish the amounts Cusicks had intended to bid. When these corrected amounts (\$90.00/cu. yd. for item 3 and \$4.60/lin. ft. for item 6) are compared on an item-by-item basis with the engineer's estimate and the amounts bid by the three other bidders, we find no basis to question the reasonableness of the corrected amounts. Moreover, when correction is allowed in a bid which is, on its face, responsive and the lowest received, and where as here, the correction does not make it higher than the next lowest bid, we are not required to object to such action. See 37 Comp. Gen. 210, 212 (1957); Matter of Ace-Federal Reporters, Inc., *supra*. Therefore, we are of the view that the administrative decision to allow Cusicks to correct its bid was proper under the authority of the regulation and decisions cited above.

Accordingly, we find no legal basis to conclude that Cusicks' bid should not have been corrected and, therefore, McCarthy's protest is denied.


Deputy Comptroller General
of the United States