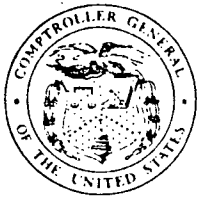


DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

50816 9714

FILE: B-183064

DATE: June 23, 1975

MATTER OF: Joe Campbell Construction Co.

DIGEST:

1. Contractor who alleged error in bid prior to award should have price increase for pipe omitted from worksheet calculations, since supplier's quotation plus profit and overhead factor in worksheets support amount of omission; however, amount claimed for omission of costs of manholes and lids is denied, since it is not apparent from information contained in supplier's quotations how amount was calculated, but there would be no objection to price increase if contractor can establish omitted cost to satisfaction of contracting officer.
2. Claim for additional cost occasioned by contractor's decision to change from Armco Truss pipe, which it intended to install when it bid, to asbestos cement pipe, which it decided to use after contract was awarded, is denied, since it has been held that rule which permits bid correction upon establishment of evidence of mistake and intended bid does not extend to permitting recalculation of bid to include factors not in mind when bid was submitted.

Pursuant to a mistake in bid alleged before award, the Joe Campbell Construction Co. (Campbell) requests an \$8,465 increase in its contract awarded under invitation for bids (IFB) No. IHS 346-3-22-74, issued on February 22, 1974, by the Department of Health, Education, and Welfare, Public Health Service, Health Service and Mental Health Administration, Indian Health Service (IHS), Portland, Oregon.

The IFB called for the construction of water and sewer extensions on the Fort Hall Indian Reservation, Idaho. A prebid conference was scheduled on March 14, 1974, for all interested bidders having questions concerning the project. The IFB specifications allowed a bidder to specify the type of pipe material (from five permissible alternatives) it proposed to use in computing its bid

for the 10-inch sewer main (schedule "A," item 1). Award was to be made on the basis of the combined total price submitted for five items in schedule "A" (sewer system) and six items in schedule "B" (water system). Six bids received and opened on March 22, 1974, were submitted respectively at \$55,887.64; \$67,715.00; \$68,492.50; \$68,694.00; \$77,214.50; and \$87,803.14. The Government estimate for the project was \$83,426.00.

In a letter dated March 25, 1974, notifying Campbell that its low bid of \$55,887.64 had been accepted, the contracting officer requested (as a result of their telephone conversation that day) verification of the unit prices in its bid.

By letter dated March 28, 1974, Campbell alleged a mistake in its bid on several items. The bid for item No. 1 (10-inch sewer main) of schedule "A" was said to have inadvertently omitted the cost of material for 3,250 lineal feet of pipe. It requested the sum of \$6,500 (\$2 per lineal foot) for the cost of the pipe. However, with respect to the type of pipe to be used, Campbell's letter stated:

"When this bid was made we planned on using Armco Truss Pipe. We have since found that 10" truss pipe is not available for us until April 22, 1974, therefore, we have had to change to Type 2 A C sewer pipe. This will require more man hours and a crane to handle. Truss pipe could be layed and handled by two men. We did not put any money into our bid for handling this other pipe."

Due to the substitution of AC (asbestos cement) pipe, Campbell requested that its bid for this item be increased by an additional \$0.50 per foot (total of \$1,625) to cover the unforeseen cost of the crane and extra laborers. In its bid for schedule "B" item 4 (meter manhole and appurtenances), Campbell also maintained that it forgot to include \$340 for the cost of manholes and lids. The total sum of the requested increases, \$8,465, Campbell noted, did not change its position as the lowest bidder.

A preconstruction conference was held on April 3, 1974. The record of that conference indicated that the contracting officer advised Campbell that its claims would be reviewed and forwarded to headquarters for decision, but nevertheless the contract was being awarded at the bid price. The contract documents were said to have been executed after Campbell indicated it understood this point and agreed to proceed at the original bid. On April 6, 1974, a letter

of award was issued to Campbell. Subsequently, the contracting officer (by letter dated April 9, 1974) advised Campbell that a review of its previously submitted documentation indicated a determination regarding the mistake in bid could not be made without the invoices for the omitted materials. Campbell's additional documentation was received on May 3, 1974, and forwarded by the contracting officer to IHS without recommendation as to the propriety of payment. The matter thereafter was submitted to our Office for decision.

Where a mistake in bid is disclosed before award, Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2) (1964 ed. Circ. 1) provides that:

"(2) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

Campbell's allegation prior to award that its low bid omitted the cost of some essential materials placed the Government on notice of the existence of a mistake. Bid preparation worksheets provided subsequent to the award showed that the cost had not been included in the preparation of Campbell's bid.

Campbell's bid specified the use of Armco Truss pipe. A supplier's quotation received by Campbell for the pipe stated a price of \$1.87 per foot. An examination of Campbell's worksheets reveals that in the preparation of the bid for the item containing the pipe an 8 percent factor was applied to costs for profit and overhead. Application of the 8 percent factor to the unit price for the pipe supports Campbell's claim for \$2 per foot. Accordingly, the price for item 1 should be increased by \$6,500.

Although Campbell has furnished quotations from a supplier of manholes and lids, it is not apparent from the information contained therein how the \$340 claim was calculated and it is therefore denied.

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However, our Office would have no objection to an increase in the price for item 4 by the contracting office if the contractor can establish the omitted cost to its satisfaction.

The claim for the additional cost occasioned by the contractor's decision to change from Armco Truss pipe, which it intended to install when it bid, to asbestos cement pipe, which it decided to use after the contract was awarded, is denied. In that connection, "We have held that the rule which permits bid correction upon the establishment of evidence of mistake and the intended bid does not extend to permitting a bidder to recalculate and change its bid to include factors which the bidder did not have in mind when the bid was submitted." See 52 Comp. Gen. 400, 404 (1972).


Acting Comptroller General
of the United States