

Protest of) Date: September 2, 1987
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CERTIFIED MIDWEST)
CONSTRUCTION, INC.)
)
Solicitation No. 169982-87-A-0034) P.S. Protest No. 87-49

DECISION

Certified Midwest Construction, Inc. (CMC) protests the contracting officer's determination that CMC should not be permitted to correct an alleged mistake in its bid, which correction would have permitted CMC to become low under Solicitation No. 169982-87-A-0034.

Invitation for Bids (IFB) No. 169982-87-A-0034 for renovation of docks at the Main Post Office, Chicago, IL, was issued by the Chicago Facilities Service Center (FSC) with bid opening on April 22, 1987. The solicitation requested unit price bids for a number of the elements of the work which were to be performed on a requirements basis, together with a lump sum bid for all other work. The unit price bids were to be aggregated with the lump sum bid on the bid sheet as the "base bid." A price was also requested for an alternate, and the sum of the base bid and the alternate was identified on the bid sheet as the "total bid." Bids were compared based upon the sum of these three components (unit price, lump sum, and alternate). Seven bids were received, with the three lowest as follows:

Blinderman Construction Company	\$1,710,724
(Blinderman)	
Ruby Construction Co. Inc.	\$1,762,000
(Ruby)	
CMC	\$1,774,000

The contracting officer rejected Blinderman's bid as non-responsive because it failed to set out a price for the alternate, leaving Ruby low. In checking bids, the Facilities Service Center (FSC) determined that CMC's lump sum subtotal, \$1,179,814.70, when added to its unit price subtotal, \$289,185.30, did not

equal the base bid of \$1,487,000 shown on its bid sheet. Pursuant to Postal Contracting Manual (PCM) 2-406.3 (b), an employee of the FSC called Timothy Carlin of CMC and requested him to verify CMC's bid. In that conversation, Mr. Carlin alluded to an intended lump sum subtotal of \$1,197,814.70, an amount which when added to the unit price subtotal equals CMC's base bid of \$1,487,000. The addition of CMC's bid price for the alternate, \$287,000, to this base bid equals the original bid of \$1,774,000. This suggests a transposition error in writing the figure for the lump sum subtotal.

In a letter of April 29, however, Mr. Carlin alleged the existence of a different mistake. Asserting that the figures for the unit price subtotal and the lump sum subtotal were correct, CMC claimed a mistake in addition in combining the sums, and requested correction of its bid to \$1,756,000, the proper sum of the three figures listed on the bid sheet.

On May 1, the contracting officer, proceeding pursuant to the procedure at PCM 2-406.3 (a)(iii), determined that although there was clear and convincing evidence of a mistake on the face of CMC's bid, there was no similar evidence thereon of the intended bid. (PCM 2-406.3 (a)(iii) provides that when the correction of a bid would result in displacing another bidder, correction may be allowed only if "the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.") Because the intended bid could not be ascertained, the contracting officer determined that the bid could not be corrected. On May 13, Ruby was awarded the contract. On May 20, CMC protested the failure to correct CMC's alleged mistaken bid as well as award of the contract to any other contractor but CMC. CMC repeated its prior argument concerning arithmetical error, but presented no worksheets or affidavits.

Ruby submitted a letter arguing that the CMC protest was without merit because it was untimely filed. Ruby contends that CMC's protest, filed on May 20, was untimely as filed more than 10 working days from bid opening on April 22. Ruby is mistaken. While it is the case that to be timely, a protest must be filed within 10 working days of the time the basis for the protest is known or should have been known (PCM 2-407.8 d.(3)), CMC's protest is timely because the 10 working day period did not begin to run until CMC became aware that its request to correct its bid was denied. This occurred when CMC received notice of the contract award which was sent to CMC on May 20.

The circumstances of this case are governed by PCM 2-406.3. In addressing CMC's argument that it is entitled to correct its bid, we are not making a de novo determination. Instead "[t]he weight to be given the evidence submitted to establish a mistake in bid is a matter for the consideration of the contracting officer, and his determination will not be disturbed unless it is shown to be without a reasonable basis." Quality Roofing Co., Inc., P.S. Protest No. 85-97, March 20, 1986; D.F. & L. Construction, Inc., P.S. Protest No. 78-40, September 15, 1978; LPL Technical Service, Inc., P.S. Protest No. 75-35, July 1, 1975.

The contracting officer determined that CMC's bid established the existence of a mistake, but did not provide clear and convincing evidence of the intended bid. Generally, where a bidder seeks a bid correction which would result in displacement of a lower bidder, the Comptroller General has permitted correction only where the alleged ambiguity in a bid admits of only one reasonable interpretation ascertainable

from the bid. Ideker, Inc., Comp. Gen. Dec. B-194293, May 25, 1979, 79-1 CPD & 379 at p. 4; Engle Acoustic & Tile, Inc., Comp. Gen. Dec. B-190467, January 27, 1978, 78-1 CPD & 72. Where the bid documents permit other reasonable interpretations of the intended bid, we and the Comptroller General have denied correction. See Leewen Mechanical Corporation, P.S. Protest No. 83-70, January 19, 1984; J.W. Creech, Inc., Comp. Gen. Dec. B-191177, March 8, 1978; 78-1 CPD & 186; B & P Printing Inc., Comp. Gen. Dec. B-188511, June 2, 1977, 77-1 CPD & 387; Indusco Industries, Inc., Comp. Gen. Dec. B-187012, November 17, 1976, 76-2 CPD & 428.

There is no question that CMC's bid contains an error. The bid documents, however, permit at least two reasonable interpretations of that error and of CMC's intended bid. This error might well be the result of a simple arithmetical error, as suggested by CMC. However, another reasonable interpretation of the error is that CMC recorded an incorrect subtotal lump sum by transposition and the \$1,487,000 base bid was that intended. That Mr. Carlin first alluded to a lump sum bid of \$1,197,814.70 when the Postal Service asked him to verify CMC's bid supports this alternative interpretation.

Under these circumstances it was not unreasonable for the contracting officer to deny correction.

The protest is denied.

William J. Jones
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Office of Contracts and Property Law

[Compared to original 3/4/93 WJJ]