



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: William G. Tadlock Construction

File: B-270101.2

Date: February 12, 1996

David B. Kuhlman, Esq., Ramseyer & Kuhlman, for the protester.

Frank K. Kotarski, Esq., and Cynthia S. Guill, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed upward correction of mistake in apparent low bid where the record contains clear and convincing evidence that a mistake was made and the intended bid price can be ascertained within a narrow range of uncertainty and remains low in any event.

DECISION

William G. Tadlock Construction protests the award of a contract to Falcon General Engineering, Inc. under invitation for bids (IFB) No. N68711-92-B-4802, issued by the Department of the Navy for upgrading the water systems at the agency's El Centro, California air facility. Tadlock contends that the Navy improperly permitted Falcon to correct a mistake in its apparent low bid.

We deny the protest.

The solicitation contemplated award of a firm, fixed-price contract to upgrade the facility's potable water system (Part A) and wastewater system (Part B). The solicitation also included four additive items, for which funding was available at the time of bid opening, and which the agency therefore considered in determining the low bidder.

The agency received six bids in response to the IFB. Including all four additive items, there were five bids ranging in price from Tadlock's bid of \$2,942,503, to \$3,097,473. The sixth bid, from Falcon, was significantly lower at a price of \$2,480,368. This disparity between Falcon's price and the other bids received prompted the agency to ask Falcon to verify its bid.

Falcon's response indicated that in preparing its bid for part A of the base bid--upgrading the drinking water system--it had erroneously transcribed its estimated material cost of \$359,150 as \$35,915. Falcon therefore requested correction of its bid for Part A from \$1,045,301 to \$1,410,994, and correction of its total base bid to \$2,579,166--\$2,846,011 total.¹ In support of its request, Falcon provided the Navy with the original quote from its material supplier and its two spreadsheets (a preliminary, or "activity," spreadsheet and a final, or "master," spreadsheet).

The agency's review disclosed additional small discrepancies, mostly in the extension of prices on the quote sheet from the material supplier (\$392,620 versus the total of \$391,601 appearing on the quote sheet).² In addition, the subcontracting price of \$102,292 from Falcon's activity spreadsheet was recorded as \$102,920 on Falcon's master spreadsheet. Falcon acknowledged the errors as the product of haste in preparing its bid but declined correction beyond the amount originally requested. Falcon's president also provided a certification that the worksheets provided to the Navy were the originals used to compile the bid. The agency granted Falcon's request for correction on September 27, and this protest followed.

An agency may allow upward correction of a low bid before award if there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.406-3. Pointing to the errors detected by the agency in price extensions on the quote sheet and entries on the activity and master spreadsheets, the protester argues that Falcon has not established its intended bid by clear and convincing evidence.

Whether the evidence meets the clear and convincing standard is a question of fact, and our Office will not question an agency's decision based on this evidence unless it lacks a reasonable basis. States Roofing & Metal Co., Inc., B-237900, Apr. 3, 1990, 90-1 CPD ¶ 353. For upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended

¹\$359,150 - \$35,915 = \$323,235. Mark-ups for overhead plus profit (12 percent), and bond (1 percent) support an additional increase of \$42,408, for a total increase of \$365,643, from \$1,045,301 to \$1,410,944.

²This figure represents the total quoted for material costs for work under both Parts A and B of the IFB. In calculating its bid, Falcon divided this total into \$348,000 for Part A costs and \$43,000 for Part B costs. Falcon arrived at the \$348,000 figure by rounding up the total for the Part A work on the supplier's quotation (\$345,610). Preliminary calculations consistent with this explanation are reflected in handwritten notations added at the bottom of the supplier's quote.

bid price, and there is no contravening evidence. Applied Constr. Technology, Inc., B-258426, Jan. 17, 1995, 95-1 CPD ¶ 22. Based on our review of the record, we find no basis to question the Navy's decision to allow the correction.

We have reviewed Falcon's spreadsheets. They appear to be in good order and support Falcon's explanation that it made an error in transcribing its material costs from its activity spreadsheet to its master spreadsheet. Although there are some other minor discrepancies, as noted by the Navy, they are trivial in amount—amounting to approximately \$2,000. To the extent that there is any uncertainty in the amount of the bid based on these discrepancies, it is within a narrow range compared to the difference of nearly \$100,000 between Falcon's corrected bid for the base and additive items and Tadlock's second low bid.

Where there is clear and convincing evidence that a mistake was made, correction of a low bid requires only that the intended bid price can be ascertained within a narrow range of uncertainty and that the bid remains low in any event. Precon Constr. Co., B-255294; B-255294.2, Apr. 6, 1994, 94-1 CPD ¶ 239. As noted above, even if the bid were increased to correct the additional discrepancies noted by the agency, Falcon would remain the low bidder by more than \$98,000, or 3 percent of its total price. See George C. Martin, Inc., B-187638, Jan. 19, 1977, 77-1 CPD ¶ 39.

In sum, the record contains nothing to show that the agency's determination here was unreasonable. On the contrary, Falcon's president has certified the correctness of the documentation submitted; this documentation shows clearly how Falcon calculated its price and how the mistake occurred. The intended bid can be readily calculated, within a narrow range of uncertainty, from the spreadsheets Falcon submitted to the Navy. Accordingly, based on our review of the record, we find that it was reasonable for the agency to conclude that Falcon submitted clear and convincing evidence of the mistake and of its intended bid.

The protest is denied.

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