



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alpha Construction & Engineering, Inc.

File: B-261493

Date: October 5, 1995

Traeger Machetanz, Esq., Oles, Morrison & Rinker, for the protester.
Bruce Palmer for Palmerco Construction, Inc., an interested party.
Bryant S. Banes, Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed correction of mistake in apparent low bid where the record clearly shows the existence of the mistake and the intended bid.

DECISION

Alpha Construction & Engineering, Inc. protests the proposed award of a contract to Palmerco Construction, Inc., under invitation for bids (IFB) No. DAHC76-95-B-0010, issued by the Department of the Army, to renovate latrines in eight barracks at Fort Richardson, Alaska. Alpha contends that the Army improperly permitted Palmerco to correct a mistake in its apparent low bid.

We deny the protest.

The solicitation's amended bid schedule consisted of six base line items (1 through 6) and two option line items (7 and 8). The line items correspond to buildings 632, 622, 624, 626, 628, 630, 620, and 640, respectively; each building has three latrines except building 640 (line item 8) which has six. The bidding schedule required bidders to enter prices for the basic line items, 1 through 6, a subtotal for the basic bid, and the total bid for line items 1 through 8. The solicitation stated that option prices would be included in the total evaluated price unless it would not be in the government's best interest.

Eleven bids were opened on May 10 at 3 p.m., the date and time set for opening. Palmerco submitted the apparent low bid and Alpha submitted the next-low bid. The amounts bid by the two firms, and the government estimate, were as follows:

<u>Base Bid:</u>	<u>Alpha</u>	<u>Palmerco</u>	<u>Gov't Estimate</u>
Line Item 1	\$ 288,000	\$ 289,000	\$ 350,000
Line Item 2	\$ 288,000	\$ 289,000	\$ 350,000
Line Item 3	\$ 288,000	\$ 289,000	\$ 350,000
Line Item 4	\$ 288,000	\$ 289,000	\$ 350,000
Line Item 5	\$ 288,000	\$ 289,000	\$ 350,000
<u>Line Item 6</u>	<u>\$ 288,000</u>	<u>\$ 289,000</u>	<u>\$ 350,000</u>
Total 1-6	\$1,728,000	\$1,734,000	\$2,100,000
 <u>Options:</u>			
Line Item 7	\$ 288,000	\$ 268,000	\$ 350,000
<u>Line Item 8</u>	<u>\$ 719,000</u>	<u>\$ 302,000</u>	<u>\$ 840,000</u>
Total 1-8	\$2,735,000	\$2,299,000	\$3,290,000

In a May 12, 1995, letter to the agency, Palmerco advised that it had mistakenly omitted costs of \$302,000 for a portion of the work under line item 8, and requested that it be permitted to correct its bid upward. In a sworn statement, the president of Palmerco explained that the mistake resulted from Palmerco's use of a computer "recap" spreadsheet. Specifically, he developed a formula in the spreadsheet program which multiplied the unit cost per latrine by the number of latrines in each building, and then added an amount for overhead and profit to each line item in the base bid (line items 1 through 6). He then developed a second spreadsheet formula for line item 8; in this formula, he incorrectly used a multiplier of three times the unit cost per latrine instead of six, the actual number of latrines in that building; this resulted in a bid half of what was intended for that line item.¹ Palmerco's president then manually rounded the number on the spreadsheet for each line item and entered the rounded totals in the firm's bid. Palmerco submitted this computer "recap" spreadsheet, its cost estimate, workpapers, and a sworn statement from the estimator who developed the cost per latrine to demonstrate that Palmerco was aware that building 640 had six latrines and that its labor and material costs for this building actually were based on a quantity of six latrines.

¹The protester did not add overhead or profit to line items 7 or 8.

The contracting officer concluded that there was adequate evidence of a mistake in Palmerco's, bid, but requested that the firm submit further evidence of the bid intended. In response, on May 17, Palmerco submitted all its original documents, including the computer disk from which the "recap" spreadsheet was developed, the solicitation drawings with the estimator's original annotations, and original supplier and subcontractor quotations. The contracting officer confirmed that the computer files retained a pre-bid date and time of "5/10/95 at 2:27:34PM," which was consistent with the sworn statements, and that the written quotes from Palmerco's suppliers and subcontractors similarly showed pre-bid opening dates and times and were based on the correct total quantity of 27 latrines. The contracting officer determined that Palmerco had provided clear and convincing evidence of the mistake and intended bid and recommended that correction be allowed. The head of the contracting activity affirmed the contracting officer's determination to allow correction, and the agency intends to award the contract to Palmerco at the corrected bid price. Alpha filed an agency-level protest, which was denied. This protest followed.

Alpha maintains that the Army improperly permitted the upward correction, arguing that Palmerco has not demonstrated that it was aware, prior to bid opening, that building 640 contained six latrines and, thus, that it mistakenly based its line item 8 price on only three latrines. While the protester concedes that Palmerco's workpapers show that its estimator considered all latrines in estimating the per unit cost for building 640, the protester maintains that these workpapers are unrelated to Palmerco's alleged mistake. In this regard, Alpha notes that the estimator's affidavit states that his responsibility was to "prepare the cost per unit," and argues that there is no evidence the estimator informed Palmerco's president, the individual responsible for preparing the bid, that building 640 had six latrines instead of three. Alpha concludes that correction should not have been allowed, since a bidder is not permitted to recalculate and change its bid to include factors which it did not have in mind when its bid was submitted. See Amtech Elevator Servs., B-216067, Jan. 11, 1985, 85-1 CPD ¶ 31; Central Builders, Inc., B-229744, Feb. 25, 1988, 88-1 CPD ¶ 195.

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 § 14.406.3. Since the procuring agency has the authority to correct such mistakes, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's judgment unless there is no reasonable basis for it. J.L. Malone & Assocs., Inc.; Helix Elec., Inc., B-261353; B-261353.2, Sept. 18, 1995, 95-2 CPD ¶ ___; M.A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296. For an upward correction of a bid, workpapers, including records of computer generated software spreadsheets and worksheets, may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid, are in good order, and are

not contradicted by other evidence. C Constr. Co., Inc., B-253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198.

We find no basis to question the Army's decision to allow correction.

The protester argues that there is no evidence to show that Palmerco's president was aware, prior to bid opening, that building 640 contained six latrines, and therefore no basis to believe that Palmerco intended to bid on the six latrines. However, we think the evidence in the record supports the Army's conclusion about Palmerco's intended bid. Palmerco's bid was signed by its president, who also prepared its lump-sum bid prices; as the signer of the bid, he is presumed to know and is responsible for knowing, the contents of the solicitation, which called for the renovation of six latrines in building 640. In this regard, the president states that he not only reviewed the solicitation drawings, but also supplier and subcontractor quotes prior to giving these documents to the estimator. Moreover, his estimator, on whom he relied to develop the unit cost per latrine, was well aware that the actual number of latrines for line item 8 was six. This is evidenced by the estimator's workpapers and worksheets which show supplier and subcontractor quotations based on six latrines in building 640, and otherwise show the estimator's own calculations based on these quotes. The estimator's affidavit states that he and the president repeatedly discussed scheduling problems and the extra costs associated with renovating the six latrines at issue. The president of Palmerco explains, in an affidavit submitted in response to the protester's allegations, that he, the estimator and a subcontractor went on a pre-bid site visit and together they inspected each of the eight buildings. He specifically recalls discussing with his subcontractors that building 640 contained six latrines. Under these circumstances, we find that Palmerco's president was aware of the solicitation requirements for building 640, and we conclude that the agency reasonably found Palmerco had submitted clear and convincing evidence of the mistake and of its intended bid, and properly permitted the \$302,000 upward correction.

The protest is denied.

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