**Comptroller General**
**of the United States**

**Washington, D.C. 20548**

# Decision

**Matter of:** PCL Constructors Canada, Inc.

**File:** B-274697

**Date:** December 24, 1996

Geoffrey T. Keating, Esq., Thomas F. Burke, Esq., and Richard C. Wall, Esq., McKenna & Cuneo, for the protester.
Alex D. Tomaszczuk, Esq., and Matthew A. Anzaldi, Esq., Shaw, Pittman, Potts & Trowbridge, for Axor Engineering Construction Group, Inc., an intervenor.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Contracting agency properly allowed correction of a mistake in the awardee's low bid where the awardee presented clear and convincing evidence of the existence of the mistake and of the intended bid price.

## DECISION

PCL Constructors Canada, Inc. (PCL) protests award of a firm, fixed-price contract to Axor Engineering Construction Group, Inc. (Axor) by the Department of State pursuant to invitation for bids (IFB) No. S-FBOAD-96-B-0001, for construction of the new United States Embassy Chancery building in Ottawa, Ontario, Canada. The protester contends that the agency improperly allowed Axor to correct a mistake in its bid before awarding the contract to it and that Axor's bid should have been rejected. We deny the protest.

Issued on June 21, 1996, the IFB requested bids for the basic work (i.e., construction of a four-story chancery office building) and for an alternate item (i.e., construction of pedestrian steps adjacent to the chancery office building). The IFB required bidders to submit a price for the basic project as well as a price for the alternate item; no individual line item prices were required. The contract was to be awarded to the responsible bidder whose bid was the lowest-priced for the basic work only.

Seven bids were received and opened on August 27. Axor's bid of $50,700,000[1] was the apparent low bid; PCL's bid of $57,367,000 was the apparent second-low bid; the independent government estimate was $65,765,835. Because Axor's bid was significantly lower than the next-low bid and the government estimate, the contracting officer asked Axor to verify its bid price. Axor responded that it had made a mistake in its bid.

Contracting officials met with Axor's representatives who explained what the mistake was and how it occurred. Basically, Axor stated that it made a mistake when it attempted to substitute one subcontractor's quote for another's. Contracting officials also examined Axor's bid worksheets (i.e., computer-generated spreadsheets), subcontractor quotations used by Axor in calculating its bid, a statement describing its employees' bid-related activities and the manner in which the bid error occurred, and a supporting affidavit from Axor's president explaining various notations on the bid worksheets, and obtained a legal opinion from a State Department attorney. Ultimately, agency officials determined that Axor had, in fact, made a mistake and allowed the firm to correct its bid upward to $54,450,000 before awarding the contract to the firm on September 12. Shortly thereafter, PCL filed this protest.

PCL protests that the agency unreasonably permitted Axor to correct the alleged mistake because there was no clear evidence that a mistake was made or what price Axor actually intended to bid if, in fact, a mistake was made. PCL asserts that it is difficult to determine the precise nature of any mistake that may have occurred because neither the original bid price nor the corrected price can be traced to any numbers contained in Axor's bid worksheets. The protester also contends that Axor may not have intended to substitute one subcontractor's quote for the other's, as Axor alleges it intended, because the quotes are not for identical work.[2]

An agency may allow upward correction of a low bid before award where there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.407-3; Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369. Whether the evidence meets this 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. Maple

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[1]All prices in this decision are in Canadian dollars.

[2]The protester submitted a number of voluminous arguments in support of its protest; the State Department responded to each argument, justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis for sustaining the protest. However, we will discuss only the most significant arguments in this decision.

Constr. Co., Inc., B-270073, Feb. 6, 1996, 96-1 CPD ¶ 43. Workpapers, including computer-generated spreadsheets, may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id. An agency may also consider statements from the bidder explaining the entries on the workpapers, how the mistake occurred, and the actual intended price. See, e.g., Pipeline Constr., Inc., 73 Comp. Gen. 228 (1994), 94-2 CPD ¶ 21. Our review of the entire record confirms that the State Department properly permitted Axor to correct its bid.

The record reveals the following chronology. In calculating its lump-sum bid for the entire project, Axor prepared a computer spreadsheet (Annex A) which, among other things: (1) included identification of the various work items from the specifications; (2) named the subcontractor (where applicable) that would perform a particular work item; (3) stated the subcontractor's quoted price for the work item; and (4) stated any price adjustment that Axor intended to make on a particular work item. Under the heading "miscellaneous metals," Annex A listed Charland Iron Works (Charland) as the subcontractor, Charland's quoted price of $12,750,000,[3] and a downward adjustment of $4 million to be made by Axor. Axor explained that it entered the quote it received from Charland but, thinking that the quoted price was too high, entered a $4 million downward adjustment next to Charland's price in order to reduce the cost to $8.75 million which was Axor's best estimate of what this work item should cost.

Less than 1 hour before bid opening, Axor received a quote[4] of just $9 million for miscellaneous metals from C. J. Rush/ Rovico (Rush).[5] As this quoted price was more in line with Axor's estimate of $8.75 million for this work, Axor quickly prepared a revised computer spreadsheet (Annex B) on which it attempted to substitute Rush's quote for its own $8.75 estimate. On Annex B, Axor entered Rush's $9 million quote in place of Charland's $12.75 million quote but, in its haste, forgot to remove the $4 million downward adjustment, resulting in a net price for miscellaneous metals of just $5 million (Rush's $9 million quote less the mistaken $4 million downward adjustment). Annex B was then used as the basis for Axor's bid.

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[3]Charland's quote was received by Axor via facsimile transmission on August 26, the day before bid opening.

[4]The parties are in agreement that it is customary in the construction industry, in this part of Canada, not to finalize subcontractor quotes or final bid prices until the day of bid opening.

[5]Rush's quote was received, via facsimile transmission, at 3:15 p.m. on August 27; bid opening was scheduled for 4 p.m. that same day.

The protester contends that it cannot be determined from Axor's worksheets whether a mistake occurred and, if a mistake was made, the precise nature of that mistake. We do not agree. The spreadsheets are in good order and, in fact, contain clear and convincing evidence, as discussed below, of the existence of the mistake and of the intended bid price.[6]

Our review of record shows that Axor made a mistake when it attempted to substitute the Rush quote for its own estimate of the cost to have a subcontractor perform the miscellaneous metals work. Axor explained that it used its own estimate of $8.75 million for the metal work. Examination of Annex A confirms that this is true. The estimate was in the form of two related entries--in one column, Axor entered Charland's $12.75 million quote for miscellaneous metals; in another column, Axor deducted $4 million for the same work. The net result of the two entries was Axor's $8.75 million estimate for this work item. The record also confirms that Axor received Rush's quote for metal work in the last hour before bid opening and then created Annex B, substituting Rush's $9 million quote--which was roughly equivalent to its own $8.75 million estimate--for Charland's quote, but leaving the $4 million downward adjustment. Axor explained that it intended to delete the $4 million adjustment in order to price miscellaneous metals at $9 million instead of its previous estimate of $8.75 million but mistakenly did not, resulting in its erroneously pricing miscellaneous metals at just $5 million. Axor's explanation of its mistake is believable and consistent with the pertinent entries on both spreadsheets, evidence in the record showing that Axor received Rush's quote via facsimile transmission less than one hour before bid opening, and the industry practice of finalizing subcontractor quotes at the last minute. Moreover, the credibility of Axor's claim that it did not intend to use $5 million as the cost for miscellaneous metals is further supported by the fact that the record shows that Axor received six quotes for metal work ranging in price from $9 million to $15 million; the $5 million figure actually used by Axor in formulating its bid was

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[6]Other than the mistake, the only noteworthy difference between the two spreadsheets is that Annex B contains some handwritten notes representing $1.4 million in additional downward adjustments made by Axor. In an affidavit submitted to the State Department, Axor's president explained that the notes indicate specific work items on which Axor could cut some of its costs to lower its total price. For example, one of the notes states: "Window 175K" which represents a cost reduction of $175,000 for windows. As each of these cost reductions is for a particular work item and none of them has anything to do with miscellaneous metals, we do not see how these reductions had any effect on the mistake made in calculating the cost of miscellaneous metals or the propriety of the agency's allowing Axor to correct its bid.

considerably below the lowest of all of the quotes received. Thus, it is unlikely that Axor intended its spreadsheet to reflect just $5 million for miscellaneous metals work. Based on this record, we believe that the agency reasonably determined that there was clear and convincing evidence of the mistake and the intended bid.

In sum, because Axor's workpapers and supporting statements provided clear and convincing evidence establishing both the existence of the mistake and the intended bid, the agency properly allowed Axor to correct its bid upward in the claimed amount. As Axor's corrected bid was still the lowest-priced bid, the contracting officer properly awarded the contract to Axor.

The protest is denied.

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