



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Asbestos Control Management, Inc.

File: B-279521

Date: June 23, 1998

Edward W. Brady, Esq., Miles & Stockbridge, for the protester.
William M. Huddles, Esq., Huddles & Jones, for Philips Way, Inc., an intervenor.
Charles D. Raymond, Esq., and Ruurd C. Segaar, Esq., Department of Labor, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably denied request for bid correction where, after initially confirming its bid, the protester subsequently sought correction based on worksheets which contained discrepancies and inconsistencies, as a result of which the agency reasonably concluded that the worksheets did not provide clear and convincing evidence of the intended bid.

DECISION

Asbestos Control Management, Inc. (ACMI) protests the Department of Labor's (DOL) denial of ACMI's request to correct a mistake in its low bid under invitation for bids (IFB) No. 97-DAA-51-JC for the installation of a new heating and air-conditioning system, electrical upgrades, demolition, and asbestos removal at the Woodstock Jobs Corps Center in Woodstock, Maryland.

We deny the protest.

The bid mistake concerns the base bid item covering the project, for which the IFB required only a single lump-sum entry. The protester submitted the lowest of 10 bids received by the December 16, 1997 bid opening. The lowest two bids and the government estimate are as follows:

	<u>Base Bid</u>
ACMI	\$2,410,000
Philips Way, Inc.	\$3,130,000
Government Estimate	\$3,902,760

On December 18, the agency requested ACMI to provide a detailed bid breakdown. The following day, the agency requested that ACMI confirm its bid and reiterated its request for a bid breakdown. By letter dated December 22, ACMI confirmed its bid and provided the agency with bid breakdown information. ACMI's bid breakdown included \$315,000 for automatic temperature controls, \$294,000 for electrical work, \$34,600 for testing and balancing, \$100,000 for asbestos abatement, \$150,000 for sheet metal and \$175,000 for insulation.¹

Because of the disparity between ACMI's bid and both the government estimate and the other bids, on January 30, 1998, the contracting officer asked ACMI to review its bid for the possibility of a mistake. On February 5, ACMI retracted its confirmation and informed DOL that its bid contained a mistake. ACMI claimed that its bid was understated by \$623,480, consisting of mistakenly excluded prices of \$393,140 for electrical work, \$1,610 for hardware and doors, \$109,600 for asbestos removal, \$3,500 for chemical water treatment, \$10,440 for frequency drives, \$34,395 for cooling towers, \$14,115 for heat exchangers and \$56,680 for overhead. ACMI stated that it had intended to include these amounts in its bid, but that they had been omitted as the result of a computer error arising from ACMI's use of a new computer networking system. The requested correction would make ACMI's bid \$3,013,261, which is approximately 4 percent lower than the next low bid.

To support its mistake claim, ACMI provided DOL with worksheets and other back-up data used to prepare its bid, including computer-generated estimate and spreadsheet printouts, its in-house costs, and its subcontractors quotation sheets for services to be performed under the solicitation. In addition, ACMI included a letter from its computer supplier attesting to incompatibility problems experienced with ACMI's software which can cause problems in spreadsheet applications, and an affidavit in which ACMI's vice president explained the mistake and the intended bid. ACMI's actually submitted bid of \$2,410,000 did not appear on any of the submitted spreadsheets. The subtotals on ACMI's allegedly original incorrect spreadsheet total to \$1,634,710.10 and a "total estimate" amount of \$2,386,293 appears on the estimate printout. According to the protester, this \$2,386,293 represents its "hard cost" amount which was "jumped" to the \$2,410,000 bid on bid day. The seven excluded quotations in question consist of five quotations from three different subcontractors and two in-house quotations (plus overhead). The subcontractors' quotation sheets are dated before bid opening and each sheet clearly reflects subcontractor price

¹According to the protester, the bid breakdown information submitted to the agency in December provided only "ballpark" estimates because ACMI was unable to find its computerized spreadsheet which contained subcontractors', suppliers' and in-house costs. ACMI explains that it later realized that the spreadsheet had been mistakenly filed under a different solicitation on which the protester had also bid.

quotes. However, ACMI's \$109,600 quotation for asbestos abatement is dated February 11, 1998 (after bid opening), and its \$3,500 quotation for chemical water treatment has no supporting documentation.

ACMI explained that its error resulted from the use of its estimating software system in combination with the computerized spreadsheet. ACMI prepares a tally or "bid prep" sheet using a computerized spreadsheet for supplier and subcontractor costs and a total bid using its estimating software. ACMI calculates its bid by adding the bid prep spreadsheet results to the numbers in the estimating software program, which then combines these totals with ACMI's in-house costs. The bid prep spreadsheet has five columns across the page: the specification section, the service to be performed, the subcontractor to perform the service, the base cost and the total cost. ACMI stated that it entered all the necessary supplier and subcontractor pricing onto the spreadsheet, but the seven prices noted above did not carry over from the base cost column to the total cost column because "some simple math formulas were not in place" As a result, these seven prices were listed as \$0 in the total cost column and were not carried over to the estimating software program, and therefore not included in the computation of ACMI's total bid.² ACMI tendered an undated spreadsheet as its original worksheet, which shows the following information for these seven items and for other relevant items in the same spreadsheet section:³

<u>Spec Section</u>	<u>Serv./Supply</u>	<u>Base Cost</u>	<u>Total Cost</u>
02515	Pavement	\$17,000	\$17,000
07217	Insulation	\$19,031	\$19,031
15972	Controls	\$315,000	\$315,000
15990	Test/bal	\$34,560	\$34,560
16000	Electrical	\$393,140	\$0
80210-08710	Doors & Hardware	\$1,610	\$0
13281	Asbestos	\$109,600	\$0
15545	Water Treatment	\$3,500	\$0

²ACMI states that it did not find the spreadsheet error when the agency first requested a bid verification because, as noted above, its spreadsheet was improperly filed under another solicitation on which the protester bid.

³We have deleted the column identifying subcontractors as irrelevant. In addition, other line items on the spreadsheet are not listed here because their costs were included in other costs and not separately priced.

15543	Frequency Drives	\$10,440	\$0
15640	Cooling Towers	\$34,395	\$0
15755	Heat Exchangers	\$14,115	\$0

As indicated, only the costs for seven items were not carried over from the base cost to the total cost column. All other costs entered under base cost on the spreadsheet, such as \$315,000 for controls and \$19,031 for insulation, were carried over to the total cost column. Therefore, \$566,800 of costs plus \$56,680 of overhead⁴ for a total of \$623,480 were not included in the bid calculation.

After reviewing the information provided by ACMI to support its claim of a mistake in bid, DOL determined that ACMI had not submitted clear and convincing evidence of its intended bid. The agency noted that there was no consistency in the amounts that were carried and the amounts that were not carried from the base cost column to the total cost column on the spreadsheet, suggesting some sort of operator error from the input of incorrect mathematical functions or formulas, and not an incompatibility problem as ACMI maintained. More importantly, DOL found that ACMI's lump-sum breakdowns, provided to DOL in its December 22, 1997 bid confirmation included "significant items of cost that were revised substantially in ACMI's later request for correction." For example, DOL found that ACMI's worksheets show a price of \$258,360 for mechanical/insulation and a price of \$393,140 for electrical work; yet, the December bid breakdown information puts insulation at \$175,000 and electrical at \$294,000. DOL believed that ACMI should have been able to supply more accurate bid breakdown information in December, in spite of its misfiled spreadsheet, since these costs were either in-house costs or quotations from subcontractors for which ACMI had quotation sheets.

DOL also found that, according to information on ACMI's spreadsheet, overhead and profit were to be calculated as 10 percent of "the entire job," yet the supporting documentation for ACMI's in-house mechanical/insulation costs are inconsistent and list a 15-percent markup for overhead and a 10-percent markup for profit. In addition, the agency was troubled by the February 1998 dates on some of ACMI's supporting documentation. For example, supporting documentation for ACMI's in-house insulation costs consists of seven pages. While the first page is dated December 16, 1997, before bid opening, the other six pages are dated February 11, 1998, after the December bid opening date. Similarly, ACMI's supporting documentation for its \$109,600 in-house costs for asbestos abatement is dated February 11, 1998. Finally, the agency was troubled about ACMI's delay in reporting the alleged mistake, in conjunction with the fact that the critical bid prep spreadsheet which the protester was initially unable to locate is undated. Based on

⁴The overhead was calculated as a percentage of the costs for the work required.

these uncertainties as to ACMI's intended bid, DOL did not permit correction and instead rejected ACMI's bid and subsequently awarded the contract to Philips Way. This protest followed.

ACMI alleges that DOL unreasonably denied its request for bid correction of an upward adjustment of its bid in the amount of \$623,480, which corresponds to the total of the seven figures that were not carried over from the base cost column to the total cost column on ACMI's original spreadsheet plus ACMI's standard 10-percent markup for these items.

A bidder's request for upward correction of a bid before award may be granted only where the request is supported by clear and convincing evidence of both the mistake and the intended bid. Federal Acquisition Regulation § 14.407-3(a); Strand Hunt Constr., Inc., B-261808, 95-2 CPD ¶ 193 at 3. For upward correction of a low bid, worksheets, including records of computer-generated software spreadsheets/worksheets, may constitute clear and convincing evidence if they are in good order and indicate the intended price, and there is no contravening evidence. CRK-JVC/Shockley Joint Venture, B-265937, Jan. 17, 1996, 96-1 CPD ¶ 85 at 5. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision unless it lacks a reasonable basis. M.A. Mortenson Co., B-256636, July 14, 1994, 94-2 CPD ¶ 22 at 3. However, the closer an intended bid comes to the next low bid, the more difficult it is to establish the amount of the intended bid, and the more closely we will scrutinize the claim of mistake. RJS Constructors, B-257457, Oct. 7, 1994, 94-2 CPD ¶ 130 at 3; Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606 at 3.

Here, the agency determined that the protester had not clearly and convincingly established that its base bid mistakenly omitted the costs indicated for the seven items that were not carried over on the proffered Lotus spreadsheet, or what the intended bid would have been. The record reflects that DOL weighed the protester's evidence and discovered various ambiguities and inconsistencies that, in the agency's view, raised a question as to whether the documents were in good order, and thereby precluded bid correction. Based on our review of the record, particularly in light of the closeness of the corrected bid to the next low bid, the agency had a reasonable basis to conclude that the protester's evidence was not in good order and therefore was less than clear and convincing.

First, ACMI's work papers are not in good order for purposes of supporting its request for correction. As noted above, the critical spreadsheets provided by ACMI to support its mistake claim are not dated. Similarly, ACMI's in-house \$109,600 quotation for asbestos abatement is dated February 11, after bid opening. While ACMI explains that the February date appears on this quotation because the protester had to reprint the quotation, we do not find this argument compelling. A comparison of this quotation sheet and the spreadsheet reveals there are no inconsistencies between the price quoted for the asbestos abatement. However,

absent the benefit of advice from the bidder, there is no way to determine when this quotation was prepared, since the quotation sheet itself is dated after bid opening and the spreadsheet is undated. Thus, absent the self-serving explanation and statements in the affidavit, this supporting documentation does not establish that this \$109,600 quotation was prepared prior to bid opening or that this quotation was actually used to prepare ACMI's bid. ACMI also has no supporting documentation for its \$3,500 quotation for chemical water treatment. In short, the supporting documentation is ambiguous both as to when and how it was prepared and as to the intended bid and thus cannot support correction. The weakness in the supporting documentation is particularly significant here because the correction requested by ACMI would bring its bid to within \$116,739 of the next low bid.

Next, the computer printouts provided by ACMI do not consistently or conclusively point to any particular intended bid. Neither of ACMI's original computer printouts reflected ACMI's actual base bid of \$2,410,000. Moreover, ACMI's alleged \$623,480 error, when added to either its alleged incorrect \$2,386,293 "total estimate" from its original estimating software printout or to its "jumped" bid of \$2,410,000 does not total its alleged intended bid of \$3,013,261.⁵ ACMI does not explain this discrepancy.⁶

Finally, the agency was reasonably concerned with ACMI's delay in finding the alleged error, especially where, as here, the protester originally claimed in its December confirmation that it had reviewed the bid submitted and found "no errors or omissions in the bid" and waived "any and all claims of a bid mistake after award of the contract." While ACMI suggests that it often bids lower than other bidders and thus its low bid in this instance did not cause alarm, we believe that the protester should have been alerted to the significant discrepancy between its bid and the other bids. Yet ACMI inexplicably did not thoroughly examine its bid, even after DOL requested verification and a bid breakdown, until approximately 7 weeks

⁵The \$623,480 error and ACMI's alleged incorrect \$2,386,293 bid total \$3,009,773; the \$623,480 error and the "jumped" bid of \$2,410,000 total \$3,033,480.

⁶A bidder may obtain correction where the intended bid cannot be determined exactly, provided there is clear and convincing evidence that the bid would remain low after correction and the amount of the intended bid falls within a narrow range of uncertainty that is significantly below the next low bid. 4-S Constr., Inc., B-248090, June 16, 1992, 92-1 CPD ¶ 523 at 5. However, ACMI's bid does not qualify for correction under this standard because ACMI's work papers are not in good order.

after bid opening when the agency specifically asked if ACMI had made a mistake in its bid. By that time, DOL questioned the reliability of the late-discovered spreadsheet used to support the claimed intended bid. The tardy production of a crucial work sheet document is reasonably viewed as raising credibility concerns and doubts about the good order of the work papers. Pueblo Enters., Inc., B-278279, Jan. 14, 1998, 98-1 CPD ¶ 15 n. 2 at 5.

The protest is denied.

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