

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-185498

DATE: February 9, 1976

MATTER OF: Asphalt Construction, Inc.

DIGEST:

Contracting officer's determination that bidder alleging mistake should be permitted to withdraw but not to correct its bid was proper where correction would increase price on item of work from \$97,079 to \$223,440, thus bringing total bid to within \$5,000 of second low bid in \$670,000 procurement.

This case concerns the refusal of the District of Columbia to permit correction of a bid submitted by Asphalt Construction, Inc. under invitation for bids 0984-AA-02-0-5 C for field and track improvements for Ballou, Coolidge and Woodson senior high schools. Four bids were received and opened on November 5, 1975:

Bidder	Unit Bid A (all work at Ballou	Unit Bid B (all work at Woodson)	ADD ALT. 1 (all work at Coolidge)
Asphalt Const. Co.	\$259,952	\$189,981	\$ 97,079
Corson & Gruman	\$249,821	\$209,000	\$219,500
Klingensmith, Inc.	\$239,700	\$222,300	\$218,700
Ratrie, Robbins & Schweizer, Inc.	\$288,239	\$220,674	\$225,271

Four other additives were included in the bid schedule but were not considered due to the unavailability of funding. Award was to be made to one bidder on the basis of unit bids A and B, plus any alternatives.

By letter dated November 7, 1975, Asphalt notified the contracting officer that it had made an error and requested permission to increase its bid price. In support of its alleged mistake Asphalt submitted its work papers and explained that subcontractor suppliers were extremely late in releasing their prices, as the result of which Asphalt received its quote from American Biltrite, Inc. at 2:30 P.M. for inclusion in the bid

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which would be opened at 3 P.M. Asphalt indicated that the cost of the Biltrite item, \$126,380, was not extended into the total column of the work paper for Additive Alternate 1. This omission resulted in a total bid of only \$97,079 for an item on which the next lowest bid was \$219,500. Asphalt requests that it be given leave to adjust its price for Additive Alternative 1 to \$223,459. If correction were permitted, Asphalt's bid for the three items to be awarded would still be \$4,929 below the bid of Corson & Gruman.

By memorandum of November 29, 1975, the District of Columbia Director of General Services submitted to the District Contract Review Committee a proposal to deny the request of Asphalt to correct its bid price. This conclusion was based in part on the following:

"(b) Asphalt Construction, Inc.'s Additive Alternate No. 1 in comparison to the other bidders and the Government estimate, reflects a constructive notice of error, recognizable on the face of the bid documents, that demands rejection unless clear, convincing and conclusive evidence is submitted to substantiate correction in bid price.

* * * * *

"(d) * * * The \$4,929 saving that the District of Columbia would recognize by awarding this contract to Asphalt Construction, Inc. at the corrected bid price for Additive Alternate No. 1 would not justify the possible erosion of public confidence in the competitive bidding system that the District of Columbia would experience. With the number of irregularities, omissions, deletions, additions and unauthorized conditions incorporated with the bids submitted to this Department, substantiation no more convincing than the data submitted by Asphalt Construction, Inc. could easily become a standard procedure with bidders attempting to rectify their bid prices."

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By memorandum of November 24, 1975, the Acting Chairman of the Contract Review Committee notified the Director of General Services that the Committee had reviewed the proposal and concurred with the Director. Thereafter, Asphalt by letter of December 9, 1975, requested this Office to permit the correction.

Our Office has frequently held that to allow correction of an error in bid prior to award, a bidder must show by clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. 49 Comp. Gen. 480 (1970). To the same effect see Federal Procurement Regulations s 1-2.406-3(a)(2)(1964 ed.). The authority to correct bid mistakes prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the agency whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. 53 Comp. Gen. 232, 235 (1973).

Counsel for Asphalt has alleged that the District had adopted a policy which permits withdrawal of erroneous bids, but effectively prohibits their correction under any circumstances. We think that the decision to permit withdrawal or correction is within the discretion of the agency, but that such discretion must be exercised on a case by case basis in accordance with the principles discussed above rather than on a broad policy basis.

It is clear that the contracting officer was not entirely convinced that Asphalt would have been the low bidder if a mistake had not been made in computing its bid. In this regard, we note that the requested correction would raise the price for one item from \$97,079 to \$223,440, thus bringing the total bid to within 1 percent, or \$5,000, of the second low bid in a \$670,000 procurement. Moreover, the evidence of mistake (aside from the subcontractor quote submitted after bid opening) consisted entirely of work sheets prepared by the bidder. Under these circumstances we believe that the contracting officer reasonably determined that correction was not appropriate.

With regard to our decision 49 Comp. Gen. 480 (1970), cited by Asphalt in support of its request for correction, we note that although the correction permitted in that instance exceeded \$750,000, a difference in excess of one and one-half million dollars remained between the two lowest bidders in that \$12 - 14 million procurement. The facts of that case are therefore not analogous in the instant case.

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On the basis of the foregoing, we believe that the decision of the District to allow withdrawal of the bid of Asphalt, but to prohibit correction of its bid, was proper.


Deputy Comptroller General
of the United States