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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Bighorn Lumber Company, Inc.

File: B-299906

Date: September 25, 2007

Alan I. Saltman, Esq., Saltman & Stevens, P.C., for the protester.
Lori Polin Jones, Esq., Department of Agriculture, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency may not correct an obvious mistake if the bidder's intended bid amount is neither ascertainable from the face of the bid nor supported by clear and convincing evidence.

DECISION

Bighorn Lumber Company, Inc. protests the award of a timber sales contract to Trapper Peak Timber Company by the U.S. Department of Agriculture, Forest Service, under the Two Elks timber sale in the MedicineBow-Routt National Forest, Colorado.

We sustain the protest.

On May 12, 2007, the Forest Service advertised the Two Elks timber sale in a Wyoming newspaper. The timber sale prospectus and bid forms called for bidders to submit only one bid amount, a "weighted average minimum (WAM) bid rate,"¹ on a

¹ The WAM is the bid rate for the stumpage of various species of timber covered by the sale. According to the prospectus, "[t]he Forest Service shall establish bid rates by species in the contract by multiplying each species' minimum acceptable bid rate by the bid increase percentage [and] [t]he bid increase percentage is the bidder's weighted average bid rate divided by the minimum acceptable weighted average rate. The total amount for stumpage is the volume of each biddable species multiplied by its bid rate." Agency Report (AR), exh. 1, Timber Sale Prospectus, at 2.

combination of 23,505 ccf² of “Lodgepole Pine and Other” and 96 ccf of “True Fir” for a total estimated quantity on the sale of 23,601 ccf as follows:

14. Bid Information				Rates Per Unit of Measure				
Species (a)	Product (b)	Unit of Measure (c)	Estimated Quantity (d)	Base Rate (e)	Minimum Acceptable Bid Rate (f)	Weighted Average Bid (g)	Additional Deposits for Slash Disposal (h)	Base Indices (i)
Lodgepole Pine and Other, Live and Dead	Sawtimber	CCF	23,505.00	\$9.87	\$11.82	*//////////	\$1.25	130.32
True Fir, Live	Sawtimber	CCF	96.00	\$9.87	\$19.92	*//////////	\$1.25	116.60
Minimum Acceptable Weighted Average Rate, 14(j)						\$ 11.85		
Bidder's Weighted Average Minimum Bid Rate, 14(g)						\$		
* Weighted Average Bidding: Forest Service to determine proportionate rates for Species and Products.								

AR, exh. 3, Bid Form at 1. Because this is a sale, rather than a procurement, award was to be made based on the highest WAM bid rate.

On June 12, 2007, the agency received and opened three sealed bids for the timber sale. Bighorn’s WAM bid rate inserted in section 14(g) of the bid form was \$21.01, which equates to \$495,857.01 for the total 23,601 ccf of sawtimber.³ Trapper’s bid listed its WAM bid rate in section 14(g) as \$522,281.10. The other bid’s WAM bid rate was \$16.26, which equates to \$383,752.26 for the 23,601 ccf of sawtimber. AR at 2.

After bid opening, the agency bid official found that Trapper’s bid evidenced an obvious mistake in that the bidder apparently inserted a “total sale value bid,” rather than the WAM bid rate, in section 14(g) of the bid form.⁴ The official noted that the mistaken bid, when divided by 23,601 ccf, would equate to a WAM bid rate of \$22.13.⁵ AR, exh. 4, Bid Official Memorandum (June 12, 2007), at 5; exh. 5, Contracting Officer’s Request for Correction (June 18, 2007). On June 13, the contracting officer contacted Trapper to determine whether its WAM bid rate was in error or was intended. AR, exh. 5, Contracting Officer’s Request for Correction, at 1. Trapper responded that it intended to bid \$22.22 for 23,505 ccf of Lodgepole Pine and Other,

² A ccf is one hundred cubic feet.

³ 23,505 ccf Lodgepole Pine and Other + 96 ccf True Fir.

⁴ Trapper’s bid as entered on the bid form was an obvious error because its \$522,281.10 WAM bid rate would result in a total bid of \$12,326,356,241.10. AR at 5.

⁵ Actually, the bid amount, \$522,281.10, divided by 23,601 ccf is \$22.129617. Using \$22.13 results in a total bid value of \$522,290.13 (\$22.13 multiplied by 23,601 ccf).

for a total value of \$522,281.10, which is the figure that it inserted as its bid in section 14(g).⁶ Id. The contracting officer then informed Trapper that the WAM bid rate was for the entire sale volume of 23,601 ccf for both species groups and that the bid rate for both biddable species, based on the total bid value included in Trapper's total bid, would be \$22.13. Id.; AR at 3.

In response, Trapper indicated that it had made two mistakes: (1) entering the total value of its bid, instead of a WAM bid rate as required in the bid instructions, and (2) only bidding for the 23,505 ccf of Lodgepole Pine and Other, instead of the 23,601 ccf of combined sawtimber included in the sale. AR, exh. 5, Contracting Officer's Request for Correction, at 1. Trapper requested that its bid be corrected to reflect a WAM bid rate of \$22.13 for the total 23,601 ccf of sawtimber. Id. On June 14, the agency received a memo from Trapper stating, "I guess I made a mistake on filling out TBR [timber] weighted avg. I put total amt instead of ccf price. I would like to change the total amt. [black line on copy provided GAO, presumably \$522,281.10] to a ccf price of 22.13 per ccf on two elks TBR sale." AR, exh. 6, Trapper's Request for Correction, at 1. No other evidence regarding Trapper's claimed mistake or intended bid, such as bid work sheets or other business records, was provided to the agency or to our Office.

Based on the foregoing, the regional Deputy Forest Ranger, the Forest Service official responsible for reviewing claimed mistakes in bid, determined:

It is my decision that since this bid is the apparent high bid, the bidder has requested permission to correct the mistake, and the Contracting Officer determined that clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, you are permitted to allow the bidder to correct the mistake.

AR, exh. 5, Deputy Forest Ranger Determination (July 3, 2007). Award has been withheld because of this protest. AR at 4.

Bighorn challenges the agency decision to correct Trapper's bid. The agency responds that Trapper's bid may be corrected to reflect the \$22.13 bid rate because the contracting officer found clear and convincing evidence to support that an error had been made in Trapper's bid, the manner in which it was made and Trapper's intended bid price. In any event, the agency argues that there is no prejudice to Bighorn because Trapper's bid is high with or without the adjustment.

An agency may allow a bidder to correct a mistake in its bid after bid opening when the bidder presents clear and convincing evidence that a mistake occurred, the manner in which it occurred and the intended bid price. A & J Constr. Co., Inc.,

⁶ Trapper's bid of \$522,281.10 when divided by 23,505 ccf is exactly \$22.22.

B-213495, Apr. 18, 1984, 84-1 CPD ¶ 443 at 5. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. Id.

First, we agree with the agency that there is clear and convincing evidence that a mistake in Trapper's bid occurred. Trapper's bid of \$522,281.10, resulting in a total bid value of \$12,326,356,241.10, was obviously an unreasonable amount.

The record shows that the agency assumed that Trapper had made a clerical error in not entering the requested WAM bid rate but instead entering the total value, that is, the intended WAM bid rate multiplied by the total estimated sawtimber stumpage covered by the prospectus, and that Trapper's intended WAM bid rate could be ascertained by dividing Trapper's bid as submitted by 23,601 ccf, that is, \$22.13.

A clerical error that is apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer is able to ascertain the intended bid without the benefit of advice from the bidder. See SCA Servs. Of Georgia, Inc., B-209151, Mar. 1, 1983, 83-1 CPD ¶ 209 at 4; G.S. Hulsey Crushing, Inc., B-197785, Mar. 25, 1980, 80-1 CPD ¶ 222 at 2. Such a correction is allowable if the discrepancy admits to only one reasonable interpretation ascertainable from the face of the bid, or from reference to the government estimate, the range of other bids, or the contracting officer's logic and experience. G.S. Hulsey Crushing, Inc., supra.

However here, contrary to the agency's assumption, the \$22.13 WAM bid rate was not logically ascertainable from the face of Trapper's bid—\$522,281.10 divided by 23,601 ccf equals 22.129617, not \$22.13. If this mistake were simply that of inserting the extended value on the bid form instead of the requested WAM bid rate, no such discrepancy would be expected. In fact, Trapper advised the agency that its intended WAM bid rate was \$22.22 for Lodgepole Pine and Other, and that Trapper intended this bid rate is confirmed by the fact that if \$22.22 were multiplied by the 23,505 ccf quantity of Lodgepole Pine and Other, the product would equal Trapper's actual bid of \$522,281.10. Thus, this mistake was not a correctable clerical error apparent from the face of the bid. See Sundance Constr., Inc., B-182485, Feb. 28, 1975, 75-1 CPD ¶ 123 at 5 (contracting officer could not ascertain intended bid by multiplying quoted unit prices by correct units).

Nevertheless, as indicated above, the mistake can be corrected if the bidder presents clear and convincing evidence that a mistake occurred, the manner in which it occurred and the intended bid price. A & J Constr. Co., Inc., supra. There is no evidence that \$22.13 was Trapper's intended WAM bid rate. Indeed, Trapper's request to the agency to correct its WAM bid rate to \$22.13 was not supported by worksheets or any other form of bid calculation documents. In fact, the record shows that it was not Trapper who calculated this amount, but the agency's bid official. See AR at 3.

While the agency asserts that Trapper's bid rate would be higher than Bighorn's in any case, there is no evidence in the record supporting this assertion. In fact, Trapper, by its own admission, did not account in the \$22.22 WAM bid rate for the 96 ccf of True Fir timber, and there is no evidence in the record whether this failure was intentional or the result of a mistaken or erroneous interpretation of the bid instructions, much less any indication as to how this would have affected Trapper's WAM bid rate. This leaves open the possibility that Trapper may, in the exercise of its business judgment, have found it uneconomical to harvest True Fir under the terms of the prospectus or that its bid rate would have been more significantly affected if it had been accounted for, such that its bid could closely approach or be displaced by Bighorn's bid. See Protester's Comments at 5 n.5. Where a bidder fails to include a price for a contract requirement, and there is no clear and convincing evidence of the intended bid if this price had been included, the bidder may not be permitted to recalculate its bid to arrive at a bid not intended before bid opening. See Astro Quality Servs., Inc., B-280676, Nov. 5, 1998, 98-2 CPD ¶ 107 at 3-4. To allow a bidder to correct its bid in such circumstances would prejudice the other bidders and the competitive bid system. See Panoramic Studios, B-200664, Aug. 17, 1981, 81-2 CPD ¶ 144 at 5.

Accordingly, the agency's decision to allow Trapper to correct its bid was not reasonable. Instead, the agency should have permitted Trapper to withdraw its bid. See id. at 4-5. We recommend that award be made to Bighorn if otherwise appropriate.⁷

The protest is sustained.

Gary L. Kepplinger
General Counsel

⁷ We considered this protest under 4 C.F.R. § 21.13(a) (2007) because the Forest Service has agreed to have protests of timber sales decided by our Office. When we consider protests of sales, the provisions of 4 C.F.R. § 21.8(d), pertaining to recommendations for the payment of protest costs, do not apply. 4 C.F.R. § 21.13(b). See Squires Timber Co., B-298859, Dec. 1, 2006, 2006 CPD ¶ 181 at n.2.