

Contractor's Quote Lacked Sufficient Detail to Establish Government Should Have Recognized Mistake

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Garvey Schubert Barer Legal Update, September 11, 2007.

The Armed Services Board of Contract Appeals recently issued a decision that serves as a cautionary tale for contractors providing quotes or bids for firm fixed priced contracts. In *Altos Federal Group*, ASBCA Nos. 53523, 54404 (Aug. 23, 2007), the contractor made a mistake in calculating its labor hour rate. The Request for Quotations (RFQ) stated that the wage determinations issued by the Department of Labor (DOL), and attached to the solicitation, would apply. However, between the issuance of the RFQ and the deadline for submission of quotes, the DOL issued new wage determinations. The Navy did not incorporate the new wage determinations into the RFQ. Nonetheless, the contractor used the new wage determination to prepare its quote and its use of the new wage determination, which led to financial hardship, especially in regard to the option years.

To alleviate those hardships, the contractor filed a claim alleging that the Navy knew or should have know that the contractor had used the wrong wage determination when it prepared its quote. While it had in fact used the wrong wage determination, the Board denied the appeal because the contractor's quote lacked sufficient detail to provide the government notice that the contractor had relied on a specific wage determination. Moreover, the Board found that the contractor's record keeping could not be relied upon because it was not sufficiently accurate.

The Board's decision reinforces the practice of including in bids or quotes not merely summary-level prices and rates, but the calculations and assumptions that provide the bases for such prices and rates.