

DECISION

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

FILE: B-185829

DATE: May 10, 1976

MATTER OF: Technology Incorporated

60855
98967**DIGEST:**

1. Protest by second low bidder against correction of bid after bid opening but before award is denied since low bidder has clearly and convincingly proven existence of mistake and entitlement to correction. GAO has right of review but authority to allow correction vests in procuring activity and weight to be given evidence submitted in support of error is question of fact, and determination to allow correction by designated evaluator of evidence will not be disturbed by GAO since worksheets contain necessary evidence.
2. Providing bidder with second opportunity to correct mistake after bid opening but before award is providing more than "two bites at the apple." However, procedure does not prejudice bidders, since correction will only be made upon convincing showing of what bid would have been but for mistake. Bidder has met its burden of proof. Offer to waive additional error discovered after procuring activity's determination to allow correction is accepted, since waiver of error would not change position of bidders.

Technology Incorporated (Technology) protests the administrative recommendation to allow correction of the low bid of Hayes International Corporation (Hayes) under invitation for bids (IFB) No. N00140-76-B-0190 issued by the Department of the Navy (Navy), Naval Regional Procurement Office, Philadelphia, Pennsylvania, for 13 A/E37T-14 test systems and related data.

Lot I of the IFB called for first article testing of a component shelter while lot II waived the first article testing for the shelter. Award was to be based on the lowest responsive, responsible bid for either lot I or lot II at the discretion of the contracting officer. Ten bids were received by the opening date of December 8, 1975. The bids of Hayes and Technology were:

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	<u>Lot I</u> <u>Unit Price</u>	<u>Lot I</u> <u>Total Price</u>	<u>Lot II</u> <u>Unit Price</u>	<u>Lot II</u> <u>Total Price</u>
Hayes	\$188,111.90	\$2,445,454.70	\$186,701.74	\$2,427,122.62
Technology	258,697.16	3,363,062.16	256,192.30	3,360,500.00

Review of the bids indicated that the bid submitted by Hayes was approximately 27 percent lower than the next low bid. Consequently, the contracting officer telephoned Hayes on December 9, 1975, and requested that Hayes verify its bid. Hayes stated that it believed its bid to be proper but on December 10, 1975, Hayes telephoned the contract negotiator to advise that it had made a mistake in its bid price. In accordance with Armed Services Procurement Regulation (ASPR) § 2-406.3(e)(1) (1975 ed.), the contract negotiator advised Hayes to make a written request for either correction of the bid or withdrawal of the bid.

Hayes submitted its written request on January 10, 1976, for correction of its bid. Included with its written request was an affidavit from the company's estimator who had prepared the bid for submission. There were five errors noted and discussed by the estimator in his affidavit. A sixth error was discovered and brought to the attention of the Navy and our Office at the conference held under the Bid Protest Procedures on March 1, 1976, and will be discussed later. Four errors for which correction is requested involve addition and/or computation errors. These errors and amounts are:

<u>Erroneous</u> <u>Amount</u>	<u>Corrected</u> <u>Amount</u>	<u>Difference</u>
\$ 8,893.80	\$ 8,900.30	+ \$ 6.50
13,004.92	10,881.37	- 2,123.55
13,830.93	13,831.23	+ .30
10,556.38	6,853.68	- 3,702.70
		- \$5,819.45 Total

The fifth error was a major one and consisted of misplacing a decimal. A material estimate sheet total of \$578,916.88 was transferred to a summary sheet correctly, but according to the adding machine tape was added as \$578.91688. Therefore the adding machine tape totaled \$578,337.98 less than the actual price of the material items. This resulted in a difference of \$572,518.53. Adding the same labor costs and same percentage of indirect costs and profit as were included in the worksheets that were used to prepare the

bid, Hayes requested that the total price for lots I and II be corrected to \$3,111,472.26 and \$3,093,140.18, respectively. If correction is allowed, Hayes will remain the low bidder on both lot and unit prices. The contracting officer believes that Hayes has submitted an erroneous bid and it has also submitted clear and convincing evidence of its intended bid price. The Navy recommends that the bid should be corrected as revised.

The sixth error was apparently known by Hayes on or about December 10, 1975, but was not brought to the attention of the Navy until March 1, 1976. This error concerns the escalation factors for material prices used by Hayes for the second and third years of the contract. Escalation factors of 2.5 percent and 3.5 percent were used, respectively, in the original bid for the second- and third-year procurements. Counsel for Technology alleges that in the corrected prices, Hayes used escalation factors of 2.2815 percent and 3.2794 percent for the second- and third-year procurements.

Hayes demonstrated at the conference that there was, in fact, no change at all in the escalation factors for the material prices. The variation was caused by the transposition of two digits in the corrected bid price for the second and third years. The unit material price of \$168,954.91 was transposed as \$168,594.91 when the escalation factors of 2.5 percent and 3.5 percent were used. The total impact of the transposed figures for the 13 units involved amounts to \$3,825.64, including burdens and profits for the 3 priced years. However, Hayes has offered to waive this amount.

Counsel for Technology argues that the evidence submitted by Hayes in support of its alleged mistake does not clearly and convincingly show what the Hayes' bid would have been at time of bid opening but for the alleged mistake. Counsel further argues that because of the disparity of the escalation factors of the material prices in the original and corrected bid, Hayes cannot prove what its intended bid price would have been. Additionally, counsel argues that Hayes is getting more than "two bites at the apple" by being allowed to change its intended bid price after the discovery of the sixth error. Thus, Technology submits that the only remedy available is to allow Hayes to withdraw its bid.

Our Office consistently has held that to permit correction of an error in bid prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. 53 Comp. Gen. 232

(1973). The same basic requirements for correction of a bid are found in ASPR § 2-406.3(a)(2) (1975 ed.) which provides:

"* * * if the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal."

After consideration of the evidence submitted by Hayes in support of the alleged mistakes, the Navy concluded as follows:

"* * * it is hereby determined that Hayes International Corporation has submitted clear and convincing evidence both as to the existence of escalation mistake enumerated and its intended bid of \$3,115,297.90 for Lot I and \$3,096,965.82 for Lot II. However, since Hayes had stated by letter dated 10 March 1976 its intention to waive correction of this mistake in the amount of \$3,825.64, the bid should be corrected to the amount set forth in this Command's Findings and Determination dated 30 January 1976; i.e. \$3,111,472.26 for Lot I and \$3,093,140.18. The bid was the low bid as submitted and remains the low bid as corrected."

Accordingly, the procuring activity determined that the nature and existence of the mistake and the bid actually intended had been proven by clear and convincing evidence. Furthermore, since the granting of the requested relief would not result in a change in the relative standing of the bidders, the Navy determined that correction would be justified.

Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but 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 administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. 53 Comp. Gen., supra, at 235.

Hayes has offered to waive the sixth error in the amount of \$3,825.64. Technology erroneously believed that different escalation factors were used in the second and third years in the original bid and corrected bid. The material price of \$168,954.91 appears in the

record for both the second and third years. The escalation factor of 2.5 percent appears for the second year and 3.5 percent for the third year. Multiplying \$168,954.91 by 2.5 percent and 3.5 percent produces escalation prices of \$4,223.87 and \$5,913.42, respectively. When added to the base material price, these figures become \$173,178.78 and \$174,868.33, and not \$172,809.78 and \$174,495.73 as shown on the worksheets. Hayes explained that the errors were produced by applying single-step calculations of 1.025 and 1.035 to a base material figure of \$168,594.91 in which the fourth and fifth digits had been transposed. It is our view that Hayes should be allowed to waive the amount of the sixth error since it would still be the low bidder. See 52 Comp. Gen. 258, 262 (1972).

Technology argues that to allow correction in the instant case would give Hayes more than "two bites at the apple," since it did not know its intended bid price until after the sixth error was discovered and, therefore, correction would impugn the integrity of the competitive bidding system.

We believe a reasonable basis exists to allow correction. The procedure for the correction of a bid after bid opening is consonant with the statutes requiring advertising for bids and the award of contracts to the lowest responsible, responsive bidders, since these statutes are for the benefit of the United States in securing both free competition and the lowest competitive prices in its procurement activities. Therefore, where these procedures are strictly followed so that the integrity of the competitive bidding system is not prejudiced, the United States should have the cost benefit of the bid as corrected, provided that it is still lower than any other bid submitted. This procedure does not prejudice the other bidders, since correction will only be made upon a convincing showing of what the bid would have been at bid opening but for the mistake. In any case, this procedure is not for the benefit of the other bidders, but rather it is for the benefit of the United States so it can receive the procured goods or services at the lowest possible price. 53 Comp. Gen., supra.

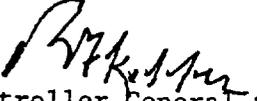
We agree that Hayes is getting more than "two bites at the apple" in this case. However, in view of the rationale above, we do not find this to be objectionable. Moreover, we fail to see the prejudice to other bidders if Hayes is allowed the additional chance to correct its bid.

Based on the worksheets which have been submitted to our Office, we agree with the Navy that Hayes has clearly and convincingly proven the existence of a mistake and its entitlement to correction. Although it has not requested correction to the full extent of the mistake, the \$3,825.64 correction which has been waived, if added to the correction

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made, would not displace Hayes from its standing as low bidder. Hayes remains low by more than \$250,000 after correction. Further, a thorough review of Hayes' workpapers was undertaken by this Office and we found no basis on which to question the administrative determination to permit correction.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States