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Edward Wirtanen  
Proc. II



**DECISION**

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

**FILE: B-187384**

**DATE: January 28, 1977**

**MATTER OF: North Star Electric Contracting Corporation  
National Electrical Contractors Association**

**DIGEST:**

1. Agency properly permitted low bidder to correct mistake where bidder's worksheet shows that bidder incorrectly copied overhead items since intended price can be ascertained. Fact that every element of total price cannot be reconstructed from bidder's worksheets does not prevent upward correction where copying error is clearly shown.
2. Where mistake in low bid was alleged prior to award and bidder presented clear and convincing evidence of nature and existence of mistake and bid actually intended, and corrected bid does not displace any other bidder, GAO will not disturb administrative determination to allow correction since there is a reasonable basis therefor even though correction significantly narrows the price differential and evidence consists solely of low bidder's affidavits and worksheets.
3. Contention that low bid was susceptible of selective correction because bidder omitted prices for several items and used out of date prices for others is without merit because bidder did not claim any error other than copying error and worksheets do not indicate that bidder intended to include costs for items or that it intended to use prices other than those it used.

The North Star Electric Contracting Corporation (North Star) and the Eastern New York State Chapter of the National Electrical Contractors Association (NECA) protest the decision by the Army Corps of Engineers to permit the Wickham Contracting Co., Inc. (Wickham) to correct a mistake in its bid and the subsequent award of a contract to Wickham under invitation for bids No. DACA51-76-B-0061.

The invitation solicited bids for the construction of a separation of power and communication duct systems at the United States Military Academy, West Point. Seven bids were received and opened on June 8, 1976. The two low bids and the Government Estimate were as follows:

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	<u>Base Bid</u>
Wickham	\$ 518,000
North Star	613,000
Government Estimate	1,050,697

In view of the variance of the low bid with the other bids and with the Government estimate, Wickham was requested to review and confirm its bid price. By telephone calls of June 9 and June 10, 1976, Wickham notified the contracting officer that it had made a mistake in the overhead portion of its bid. The error was said to have occurred when the figure of \$86,583 for overhead was incorrectly transposed as \$8,858 from an adding machine tape to a summary worksheet. In support of its alleged mistake Wickham submitted its original worksheets and backup data relating to its bid together with the original adding machine tape. Wickham later submitted sworn statements explaining in detail how the error occurred and requesting that its base bid be corrected to its intended bid of \$595,896.

Our Office has consistently held that in order to permit correction of an error in bid prior to award, a bidder must submit "clear and convincing evidence" (1) that a mistake was made, (2) the nature of the mistake, and (3) the bid price actually intended. 53 Comp. Gen. 232 (1973). These same basic requirements for the correction of a bid are found in the Armed Services Procurement Regulation (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."

The contracting officer and the division engineer recommended that Wickham be permitted to withdraw but not correct its bid. The contracting officer states that although Wickham had presented "cogent and believable" evidence as to the mistake asserted, it had not submitted clear and convincing evidence of the bid actually intended. It was their view that Wickham did not satisfactorily explain a number of items in the worksheets other than the overhead markup. For instance, no backup figures were submitted for productivity rates; labor rates were applied to conduits and not to the cable itself; no backup figures were submitted as to the splice allowance; out of date catalogues were used; and a number of unit

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prices listed were not based upon quotations, catalogue sheets, etc., but merely upon the contractor's past experience.

The mistake allegation was forwarded by the procuring office to the Chief Counsel, Office of the Chief of Engineers, for resolution in accordance with ASPR § 2-406.3(b)(1). The Chief Counsel determined that Wickham had submitted clear and convincing evidence of an error in its bid, the manner in which the error occurred, and the amount of the intended bid price. Wickham was granted its request to increase its base bid by \$77,925 to \$595,896. Award was made to Wickham on the basis of the corrected price.

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.

Calling our attention to the initial recommendation of the contracting officer and the division engineer, North Star contends that the entire bid computation should be considered in deciding whether a bidder seeking correction has proven his "intended" bid. This question was recently considered in decision Active Fire Sprinkler Corporation, B-187039, August 17, 1976, 76-2 CPD 160, the facts of which are similar to the instant case. In Active, as here, the alleged error consisted of the misplacing of a decimal point when a figure was transferred from one document to another. There, as here, the contracting officer denied correction because there were discrepancies between the bidder's worksheets and the Government's estimate of what was required to perform the project. We stated:

"In our view these alleged discrepancies in Active's worksheets do not prevent us from determining the amount of Active's intended bid. We do not believe that the questions raised concerning portions of Active's worksheets which have little or no relation to the type of error alleged or to the part of the work affected by the error affect the clear and convincing evidence of the mistake and the amount of Active's intended bid. It is still clear that the error consisted of a misplaced decimal point and that the amount of the intended bid is to be measured by the difference between

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the figure on the worksheet and that on the adding machine tape. Accordingly, Active should be allowed to revise its bid upward \* \* \*."

North Star also alleges that the omission of a labor cost for pulling cable and the use of an out-of-date catalogue are errors that could as easily give rise to requests for correction as the error in overhead markup. The protester cites our decisions in 37 Comp. Gen. 851 (1958) and B-177955, March 22, 1973 in support of its position that a bidder may not be permitted to remain low by foregoing part of its claim of error. However, in the instant case, Wickham did not claim any mistake in bid other than the incorrect copying of the amount of overhead. Also Wickham's worksheets do not demonstrate that Wickham intended to use other than an out-of-date catalogue or that it intended to include a labor cost for pulling cable. We, therefore, find no support for North Star's contention that Wickham's bid was susceptible of selective correction.

North Star next contends that Wickham's affidavits and worksheets are self-serving and may not alone be considered sufficient to permit correction. Citing our decisions in 9 Comp. Gen. 339 (1930), 52 Comp. Gen. 258 (1972), and Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82, North Star also points to the fact that the increase of \$77,925 brought the low bidder within 3 percent of the second low bid. However, in the cited cases there was an uncertainty as to the intended price. Here, the administratively designated evaluator found no such uncertainty. Also, our Office will not disturb administrative determinations to allow correction where there is a reasonable basis therefor even though correction significantly narrows the price differential. ILC Steinthal, Inc., B-184332, June 7, 1976, 76-1 CPD 363.

After our review of the material submitted to the Army by Wickham, we find no basis for questioning the Army's decision to permit Wickham to correct its bid. The procuring agency was able to determine the amount the bidder intended to bid and we believe that a reasonable basis existed to allow correction. Where the procedures for correction of a bid after bid opening are strictly followed so that the integrity of the competitive 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 other bidders,

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but rather it is for the benefit of the United States so it can receive the procured goods at the lowest price. 53 Comp. Gen. 232, 235, (1973).

Accordingly, in view of the above, the protest is denied.

Deputy

*R. F. K. 1/14*  
Comptroller General  
of the United States