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DECISION



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

FILE: B-190094

DATE: December 16, 1977

MATTER OF: Verne Manufacturing Corporation

DIGEST:

Agency's denial of bid correction is sustained when major portion of contract work was omitted from bidder's calculation of its bid. While bidder's worksheets show material and man-hour estimates for entire job they do not contain sufficient information to show what bidder would have bid if omitted portion had been included in bidder's calculation of price.

Verne Manufacturing Corporation protests the refusal of the U.S. Army Corps of Engineers to allow correction of its bid submitted under invitation for bids DACW59-77-B-0024, issued by the U.S. Army Engineer District, Pittsburgh, Pennsylvania. The Corps found that a mistake had been made which would warrant withdrawal of Verne's low bid, but that correction could not be permitted because there was not clear and convincing evidence of Verne's intended bid price as required by Armed Services Procurement Regulation (ASPR) 2-406.3(a)(2) (1976).

The IFB required the successful bidder to fabricate, paint and deliver one pair of sectionalized, miter river lock gates. Bids submitted thereunder ranged from Verne's low bid of \$360,934 to \$1,376,138, and the second low bid was that of Yaun Manufacturing Company at \$592,513.

Due to Verne's unusually low price, Verne was requested to review its bid for possible error. By letter of June 23, 1977, Verne acknowledged that it had committed an error, and furnished an explanation of the nature of the error along with back-up papers and worksheets indicating a revised price of \$549,134 as the intended bid.

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Verne's President explained that the mistake occurred when the bid was computed without regard to a "Miter Lock Gates Summation" sheet which had been prepared from the labor and internal detail sheets that had been worked up. The detail sheets reflected only the items common to both right and left hand lock gates and the five gate sections for one side only. The summation sheet, however, included a doubling of the labor and material needed for the gate sections to represent gate sections for both sides. Because the summation sheet was not before the Verne official who prepared the bid, the bid worksheet included labor and material only for half of the total gate sections required. Verne contends that its intended bid price can be ascertained by "plugging in" to its worksheet the labor and material appearing on the summation sheet and applying the 11 percent profit factor appearing on the worksheet. (On its "corrected" worksheet, Verne also doubled the number of freight cars needed from four to eight and increased from 4 months to 5 the rental period of a cherry picker.)

The District Engineer recommended that correction be allowed. However, higher echelons within the Corps concluded that correction could not be allowed because there was not clear and convincing evidence of the intended bid.

The Corps offers three reasons for its position. First, the Corps feels that it was not certain that Verne would have applied the 11 percent profit factor had the costs on the missing summation sheet been included in the original bid computations. The Corps notes that Verne originally bid \$280,134, based upon a 16.9 percent profit factor, but revised its bid prior to bid opening to \$360,934 on the basis of an 11 percent profit factor. (The worksheet reflects the original and revised bid.) The Corps states that Verne "has no apparent standard profit percentage."

Secondly, the Corps found no indication of inclusion in Verne's worksheets of the cost of 5060 pounds of steel filler blocks required by Drawing 21/11 and 480 square feet of aluminum walkway grating. The value of these materials is estimated by the Corps to be about \$5,000, including profit. However,

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the Corps notes that Verne included in its bid a contingency factor in the form of a 20 percent allowance for material waste and miscellaneous materials, and expresses its uncertainty whether the 20 percent factor was purposely intended to cover the steel filler blocks and walkway grating or whether the 20 percent contingency would have been added independent of their (the blocks and grating) inclusion in the bid.

Finally, the Corps contends that Verne would not have bid on the basis of using eight freight cars if it had not made its original error. The Corps states that when the missing continuation sheet was "plugged into" the original worksheet Verne merely doubled the number of freight cars needed to transport the materials. The Corps, however, calculates that only 7 cars would be needed and that 7 cars is all that Verne would have bid on originally if its original bid had been correctly calculated. Verne calculated its bid on the basis of \$2,000 per freight car.

While this Office originally considered correction of mistakes in bids alleged after bid opening and prior to award, this authority was subsequently delegated to the procuring agencies. 51 Comp. Gen. 1, 3 (1971). Although we have retained the right to review the administrative determination, the weight to be given the evidence is a question of fact to be considered by the administratively designated evaluator of the evidence, and such determination will not be disturbed by our Office unless there is no reasonable basis for the determination. 51 Comp. Gen. 1, 3 supra. Moreover, while the evidence necessary to establish the existence of a mistake must also be "clear and convincing," the degree of proof is in no way comparable to that necessary to allow correction. 52 Comp. Gen. 258, 261 (1972).

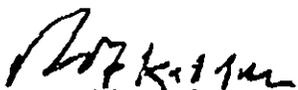
We believe that the Corps had a reasonable basis for its determination. As the facts show, Verne's bid was computed based on only one-half of the total gate sections required. Although Verne contends that its intended bid price can be ascertained from the figures and rates appearing on its worksheets, we agree with the Corps that the worksheets do not clearly and

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convincingly show what the protester would have bid had the omitted portion of the work been included in the calculation. Aside from the uncertainties cited by the Corps, we are not convinced that Verne's unit price for material was a constant which would have been used by Verne regardless of the amount of material necessary to do the job. In short, we believe that correction is not appropriate in this case because a major portion of the contract work was omitted from the bidder's calculation of price and the worksheets submitted by the bidder do not contain sufficient information to show what the bidder would have bid if the omitted portion had been included in the calculation.

Accordingly, we concur with the Corps' conclusion that Verne should be permitted to withdraw its bid but that correction may not be allowed.

Deputy


Comptroller General
of the United States