

## DECISION



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

*[Protest of Agency Denial of Bid Correction]*

FILE: B-194209

DATE: August 24, 1979

MATTER OF: Sentinel Electronics, Inc.

CNG 00829

## DIGEST:

1. Agency determination that bidder who erroneously used one of three quotations for material costs in bid for radio components be permitted to withdraw but not correct bid is reasonable because worksheet and quotation do not indicate which quotation bidder intended to use but do indicate that error was made.
2. Degree of proof required to permit bid correction is much higher than that required to justify withdrawal. Consequently, agency's decision that available evidence establishes basis for withdrawal but not correction is not improper, and is reasonably supported by the record.

AGC 00084

Sentinel Electronics, Inc. (Sentinel) protests the decision of the Command Counsel, United States Army Material Development and Readiness Command (DARCOM), to permit withdrawal but not correction of its bid. DARCOM found, in response to Sentinel's assertion that it made a "systematic mistake affecting the unit price" by using the wrong vendor quotation, that the evidence supported the claim of mistake but did not establish Sentinel's intended bid. We believe the agency's determination was reasonable.

The case arises in connection with invitation for bids (IFB) DAAB07-74-B-0034, issued by the Army Communications and Electronics Materiel Readiness Command, Fort Monmouth, New Jersey for the AN/VRC-12 "family" of radio components: 2486 R-442/VRCs, 3669 RT-524/VRCs and 862 RT-246/VRCs plus ancillary items. The following three bids were received: Sentinel, \$12,069,560; E-Systems, \$14,884,444.50; and Oklahoma

Aertronics, \$21,225,111.14. Because of the disparity between Sentinel's bid and that of E-Systems, the contracting officer wrote Sentinel and informed that firm that a possible mistake existed in its bid and requested verification of the bid.

Sentinel replied that its bid did contain an error and requested that the price be revised to \$13,798,330, an upward adjustment of \$1,728,770 reflecting a higher materials cost and corresponding adjustments to profit and overhead. In support of its request, Sentinel provided the agency with a letter explaining the nature of the asserted error, a certified copy of a worksheet and copies of three quotations from a supplier, one dated February 27 and two dated February 28. Sentinel explained in its letter that the error occurred because its vice president selected the wrong quotation and provided the president, who was calculating the bid, with incorrect material costs for each of the three items to be included in Sentinel's bid.

DARCOM reviewed the evidence in accordance with Defense Acquisition Regulation (DAR) § 2-406.3(a)(2) (1976 ed.) (which provides for correction of a bid, which both as corrected and uncorrected remains low, if the evidence is clear and convincing both as to the mistake and the bid actually intended) and determined that neither the workpapers nor the quotations indicated that Sentinel intended to use any quotation other than the one it actually used. Only Sentinel's after-the-fact letter of explanation evidenced its intent to use the other quotation. The agency also found that Sentinel, rather than seeking to have its bid corrected to include a previously calculated item which appeared on the original worksheet, was attempting to recalculate its bid by using a quotation which was never a factor in its original bid preparation. Accordingly, DARCOM concluded that since Sentinel's documents did not clearly and convincingly establish its intended bid price, the bid could not be corrected. However, the agency did consider that the evidence presented was sufficient to permit withdrawal of Sentinel's bid.

Sentinel asserts that all the evidence it provided, when viewed as a whole, clearly shows that the incorrect quotation was used in preparing the bid and establishes the correct bid by use of simple calculations. The protester maintains that DARCOM's view that Sentinel is attempting to recalculate its bid by using a quotation not included in the original bid preparation is erroneous because all the quotations were in existence at the time the bid was prepared. Sentinel argues that it merely is attempting to correct its bid by using the latest material costs. Sentinel states that the quotation used did not include all the items of cost which it intended to include in the bid and that the corrected price merely contains all of the elements that Sentinel intended to include. In this regard Sentinel argues that this situation is similar to that in 49 Comp. Gen. 480 (1970), where this Office sustained an agency's determination to permit correction of a bid where a cost item was omitted from the bidder's worksheet.

The documents submitted by Sentinel reveal that the bid was prepared on a single undated worksheet. Material costs for R-442, RT-524 and RT-246 were listed. To these costs were added the cost of labor, labor burden, general and administrative (G&A) costs, a profit factor, and an unidentified item which Sentinel later explained is for "VRC program costs", which resulted in prices of \$894 for R-442, \$2,034 for RT-524 and \$2,705 for RT-246. These prices were used in the bid. The documents also show, as explained in Sentinel's letter, that it received three quotations from its supplier. The first is dated February 27 and quotes prices for Phase A subassemblies to be used in the manufacture of these items. The second message dated February 28 reduced the prices because of the supplier's failure to allow for Government Furnished Property (GFP). The next message also dated February 28 quoted prices for "the bill of material". As Sentinel explains in its letter to the agency, the February 27 quotation

was for "subassemblies indicating a significant element of labor and cost thereof" for the three items. It further explains that the initial February 28 quotation represented a reduction of the prices in the February 27 quotation as a result of the supplier being informed of the GFP. The last quotation, we are told, included the material without any labor costs. Sentinel explains that its vice president mistakenly handed its president the lower "bill of materials" quotation instead of the complete February 28 quotation during the bid calculation.

Although we have 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 asserted mistake is a question of fact to be considered by the administratively designated evaluator of evidence whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. Murphy Brothers, Inc. - Reconsideration, 58 Comp. Gen. 185 (1978), 78-2 CPD 440. Here, we find a reasonable basis for DARCOM's determination.

Sentinel insists that it intended to use the higher February 28 quotation. There is nothing in either the worksheet or the three quotations submitted, however, to indicate which of the February 28 quotations would have been the appropriate one to use. While it may be reasonable to assume that the February 27 quotation was not a viable one because it did not take GFP into account, the record does not otherwise convincingly establish that Sentinel intended to acquire the completed subassemblies from its vendor as opposed to acquiring the materials and providing its own labor to assemble to those materials. In this regard, we note that Sentinel's worksheet contains a cost item for labor for each of the three components. There is no indication in the record that this labor was exclusive of what was required for the subassemblies;


neither is there an explanation in the record as to why Sentinel requested and received the bill of material quotation. Under these circumstances, and in the absence of some evidence supporting Sentinel's after-the-fact explanation of what it intended, we believe the agency acted reasonably by refusing to allow correction of the bid.

In 49 Comp. Gen. 480, supra, the case relied on by Sentinel, this office upheld an agency determination that the mistake was correctable based on the omission of an element that was clearly required for the project and which was evidenced by a single quotation. We find that case inapposite here.

We note that Sentinel seems to argue that the conclusion that its bid may be withdrawn inevitably leads to the conclusion that the bid is correctable. We need merely point out that the degree of proof required to permit correction is much higher than that required to justify withdrawal. Murphy Brothers, Inc. - Reconsideration, supra; 51 Comp. Gen. 1, 3 (1971). Here, the conclusion that Sentinel made a mistake entitling it to withdraw its bid is based on the disparity in bid prices received, Sentinel's assertion that it made a mistake, and the apparent inability of the agency to affirmatively establish that Sentinel did not err in submitting the bid it did. See 36 Comp. Gen. 441, 444 (1956). From the evidence of record, however, we cannot say that Sentinel has clearly and convincingly established what it actually intended to bid. Thus, we find nothing inappropriate or improper about the agency's conclusion to permit Sentinel to withdraw but not correct its bid.

The protest is denied.

For The

  
Comptroller General  
of the United States