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**DECISION**



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

FILE: B-200664

DATE: August 17, 1981

MATTER OF: Panoramic Studios

DIGEST:

1. Fact that contracting officer did not follow agency procedures for referring matters relating to mistake-in-bid claim to higher level was not prejudicial to protester since agency's rejection of protester's bid was consistent with principles and regulatory provisions governing bid mistakes.
2. Although contracting officer did not specifically advise bidder of type of evidence necessary to support correction of alleged mistake in bid until after he informed bidder that evidence already submitted would not support correction, bidder was not prejudiced since bidder was provided opportunity to furnish additional evidence of alleged mistake both to agency and our Office in connection with protest.
3. Where bidder alleges mistake in response to verification request but fails to submit adequate evidence clearly establishing nature of mistake or that bid, as intended, would have been low, bid must be rejected since permitting its consideration would be unfair to other bidders.

Panoramic Studios protests the award of a contract to Rauda Scale Models under IFB N60921-80-B-0170 issued by the Naval Surface Weapons Center for two architectural topographic models of Wallops Island, Virginia. Panoramic argues that it should have received the award as the low

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bidder even though it informed the Navy that its bid contained an error because it also informed the agency that it would accept award at its original price. The protester urges that it be paid bid preparation costs because of the improper rejection of its bid. For the reasons stated below the protest and claim for bid preparation costs are denied.

On the August 11, 1980 bid opening date ten bids were received ranging from Panoramic's total price of \$7,590.86 to a high bid of \$28,556. The five lowest bids were as follows:

<u>Unit</u>	<u>Total</u> <u>(including discounts)</u>	
Panoramic	\$3,814.50	\$7,590.86
Rauda	5,425	10,850
Image Technology	5,445	10,890
Messmore & Damon	7,000	13,720
Model Makers	8,875	17,750

The contracting officer concluded that since Panoramic's bid was so much lower than the other bids it may have been the result of a mistake. Consequently, the contracting officer requested a written estimate from the agency's technical staff. Based on their cost estimate of \$6,720 per unit, the staff's level-of-effort estimate and the bid prices received, he informed Panoramic by letter of August 14 that the agency suspected a mistake. The August 14 letter listed the five lowest bidders and their prices, informed Panoramic of the Government's estimate of the staff-days of effort required and concluded: "It is requested that you review your bid and either confirm your bid price in writing or furnish evidence in support of an alleged mistake. If you confirm your price as offered, it is suggested that you submit supporting data which demonstrates that the price offered is reasonable for for the work required."

By letter of August 19, Panoramic responded by submitting photos of related work, references, a worksheet containing level-of-effort information and costs totaling \$4,005 per unit and a technical summary. In conclusion Panoramic stated: "We trust that the minor discrepancy in transcribing the price figure will not create any special problem. The unit price should be \$4,005.00." Panoramic offered no other explanation of its alleged mistake.

The contracting officer reviewed the information submitted by Panoramic and determined that the worksheet did not conclusively establish the manner in which the alleged error occurred in the intended bid and showed no relationship between the actual bid price and the alleged intended price. Thus, by letter dated September 8, the contracting officer informed Panoramic that its bid was not correctable. In addition to quoting a portion of Defense Acquisition Regulation (DAR) § 2-406.3(e)(1) (1976 ed.), which describes the type of evidence which a bidder must supply to support a request to withdraw or modify its bid because of an alleged mistake, the letter informed Panoramic that because its bid was so far out of line with the other bids and considering that it did allege a mistake the bid could not be accepted and that the firm should formally request bid withdrawal.

Panoramic responded by informing the Navy that it was standing by its original bid price and would protest award to any other firm to our Office. Nonetheless, the firm's bid was rejected and the award was made to Rauda.

In its report the Naval Supply Systems Command indicates that the contracting officer mishandled this matter because he neglected to submit the matter to Command Headquarters for determination by the Deputy Commander for Contracting Management as required by Navy regulations implementing DAR § 2-406.3(b)(2). In addition to stating that the contracting officer was without authority to reject Panoramic's correction request or its offer to accept award at its original bid price, the Command indicates that the contracting officer should have provided that firm with specific guidance as to the evidence required to support a mistake allegation. There

is no indication, however, that the Command evaluated the evidence of mistake submitted by the protester or has attempted to reach any conclusion about the substantive position taken by the contracting activity. We find that the action taken was consistent with the DAR and therefore find no prejudice to the protester as a result of the contracting activity's failure to adhere to Navy implementing instructions.

DAR § 2-406.3(e)(1) requires contracting officers to call a bidder's attention to a suspected mistake and to request verification of the bid. If that bidder alleges a mistake, the contracting officer is to advise the bidder to request that the bid be withdrawn or modified and to support its request by statements concerning the alleged mistake and all pertinent evidence such as the bidder's file copy of the bid, the original work sheets and other data used in preparing the bid, subcontractor's quotations, if any, published price lists, and any other evidence which establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

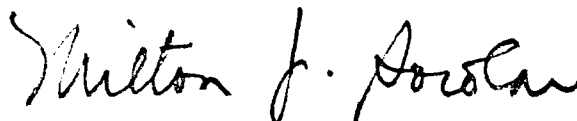
The only evidence submitted here consists of an undated "Work Sheet" which purports to substantiate Panoramic's alleged intended price of \$4,005, along with a statement that the error resulted from a minor discrepancy in transcribing the price. No explanation has been provided concerning just what that error was or how it was made.

The mistake-in-bid rules are intended to permit relief to bidders who make genuine mistakes in their bids; the paramount concern of the rules, however, is the protection of the competitive bidding system. Thus, the rules permit correction of a bid after bid opening, but only if a high evidentiary standard is met and then only if the bid as corrected will not come too close to the next low bid. See, e.g., Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82. Similarly, despite the firm bid rule (precluding a bidder from withdrawing its bid during a specified period following bid opening), withdrawal of a bid is permitted where adequate evidence of an honest mistake exists, but a bidder cannot elect to have the bid considered, notwithstanding the mistake, unless it is clear that the bid both as submitted

and as intended would be low. Regis Milk Company, B-180930, June 17, 1974, 74-1 CPD 328. In addition, when a mistake is alleged but no evidence in support of the allegation is provided, or when a bidder denies that a mistake has been made but it nonetheless is apparent that an error indeed has been made, the bidder may not remain in contention for award--rather, the bid must be rejected. DAR § 2-406.3 (e)(2); 51 Comp. Gen. 498 (1972); H. Martin Construction Company, B-201352, April 8, 1981, 81-1 CPD 268; Hanauer Machine Works, B-196369, March 6, 1980, 80-1 CPD 178.

Here, although the evidence in support of Panoramic's alleged mistake was inadequate to permit correction, or to show the nature of the alleged mistake, Panoramic has not denied that it made a mistake, and the disparity between its bid price and the other bids and the Government estimate suggests that the bid does indeed reflect a mistake. Panoramic, however, has not furnished any evidence in support of its assertion that the error made was a relatively minor one; instead, it has argued that the agency should have accepted its bid at the original, uncorrected bid price. In light of the principles set forth above, we cannot agree with Panoramic. There is no probative evidence which indicates the nature of the mistake that was made, and thus we cannot conclude that the bid, as corrected, would be low. While the correction Panoramic originally sought would leave its bid still well below the Government estimate and the other bids, Panoramic's failure to submit evidence showing that the increase sought was its intended bid leaves us with a record that does not in any way clearly establish that Panoramic's bid, corrected for whatever error was made, would remain low. Thus, we think the contracting agency could reasonably conclude under these circumstances that a mistake was made, but that, because the exact nature and amount of the mistake was not clear, it would have been prejudicial to other bidders to permit the Panoramic bid to remain in contention for award.

Consequently, we deny the protest and the claim for bid preparation costs.



Acting Comptroller General  
of the United States