

DECISION

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

FILE: B-209438.2

DATE: May 10, 1983

MATTER OF: Advanced Images, Inc.

DIGEST:

1. In order to have an error in a bid corrected after bid opening, a bidder must submit clear and convincing evidence of the error and the intended bid price. Moreover, the weight given to such evidence is a question of fact to be considered administratively by the procuring agency, whose decision will not be disturbed by our Office unless it is without a reasonable basis.
2. GAO cannot question procuring agency's refusal to permit correction of a bid mistake alleged after bid opening where documentation submitted in support of claim allows more than one interpretation as to intended bid.
3. Where a bidder alleges a mistake after bid opening, it is not then generally free to decide to waive its claim. Nevertheless, waiver will be permitted if it is clear that the intended bid would have been the lowest even though the intended bid could not be clearly proven for the purpose of bid correction. However, it is impossible to conclude that alleged mistaken bid would have been the lowest where intended bid is subject to interpretations which would make the bid high.

Advanced Images Incorporated (AII) protests the rejection of its bid under invitation for bids (IFB) No. 6744 for photographic products, issued by the United States Geological Survey, Department of the Interior (Interior). The protest is denied.

2-255-49

The original bid submitted by AII was for \$20,245. The next low bid was submitted by National Graphic Center (National) for \$23,722. Bid opening was on June 14, 1982. The contract was awarded to National on September 15, 1982, for 1 year beginning the day of the award.

AII states that after bid opening, Interior verbally requested verification of the AII bid several times. On July 21, 1982, Interior requested written verification of AII's bid. AII, by letter dated July 28, 1982, alleged error in five items of its bid and requested correction. AAI alleged that it intended to bid a unit price of \$2 for each of these five items. This claim, if allowed, would have changed its bid for these items as follows:

<u>"Item</u>	<u>Original</u> Unit/Total	<u>Claim</u> Unit/Total
2.d	\$.25/\$250	\$2.00/\$2000
2.e	\$.20/\$100	\$2.00/\$1000
2.f	\$.20/\$40	\$2.00/\$400
3.a	\$.25/\$25	\$2.00/\$200
3.b	\$.20/\$20	\$2.00/\$200"

AII asserted that the errors had been made when a secretary had misread the figures and inserted incorrect unit and total prices in the bid. As evidence to support its allegation of error, AII sent its worksheets and other documents used in preparing the bid. If allowed, the correction would have increased AII's bid to \$23,424.

On August 16, 1982, Interior sent the documents to its Office of Acquisition and Property Management and to its Office of Solicitor for a "legal determination."

AII states that it was contacted on August 25, 1982, by an Interior attorney and that the attorney asked whether or not AII would accept the contract at its original bid price. AII says it agreed to do so and confirmed its intent to do so by a letter dated August 30, 1982.

Interior, by letter dated September 15, 1982, informed AII that it had made a determination that "your firm [may] withdraw its bid." AII was also informed that an award had been made to National.

A letter from Interior to AII, dated October 20, 1982, explained that there was clear and convincing evidence that AII's bid was mistaken so as to permit withdrawal but that there was not clear and convincing evidence of the bid actually intended so as to permit correction. Specifically, Interior noted that AII's worksheet entries for the five items were subject to more than one interpretation--ranging up to \$200 per item--as to the prices actually intended. As stated by Interior:

"For item 2.d, the only clear number is the '2', what follows could be '5', '15', '00', or '0.'

"For item 2.f, the figure could be '20' or '200.'

"Item 2.e, definitely looks like a '20.'

"Item 3.a appears to be '25.'

"Item 3.b could be '20' or '200.'

"On every other page of the worksheet where the unit price is less than a dollar there is a decimal point before the two figures, which are written on the far right edge of the space provided. For the five disputed items there are no decimal points, and the numbers are written closer to the left edge of the space provided, in the same manner that unit prices of a dollar or more are written on the other pages of the worksheet.

"It is clear that unit prices of \$.25 and \$.20 were not intended for these five items. It is not clear, however, that a unit price for each one of \$2.00 was intended [as claimed by AII]." (Emphasis in original.)

As to the other documents submitted by AII, Interior found that they did not support the correction because:

"The price list is not at all useful as the prices are several times more than those bid. The Contracting Officer reports the bidder's statement that the list would probably be of little value since all the prices were reduced to make the bid more competitive.

"The invoices are of no help since there is no explanation of how the items of supplies purchased relate to the items bid."

AII has not taken exception to Interior's analysis.

In order to have an error in a bid corrected after bid opening, a bidder must submit clear and convincing evidence of the error and the intended bid price. See Federal Procurement Regulations § 1-2.406-3(a)(2) (1964).

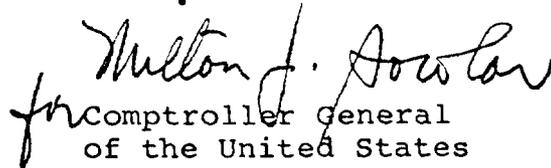
Although we have retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. The weight to be given such evidence is a question of fact to be considered administratively by the designated evaluator of evidence whose decision will not be disturbed by our Office unless it is without a reasonable basis. 52 Comp. Gen. 706 (1973); 53 Comp. Gen. 232 (1972). We find that Interior had a reasonable basis to conclude that, while it was clear that AII had made an error in its bid, the evidence was insufficient to show the intended bid. Therefore, AII's claim for correction was properly denied.

AII also asserts that, since it has agreed to waive its error claim and accept the contract at its original bid price, it should have been awarded the contract.

Where a bidder alleges a mistake after bid opening, the bidder is not then free to decide to waive its mistake claim; to permit the bidder to do so would be to allow the bidder the impermissible option of either affirming its low bid or withdrawing it, depending upon which appeared to be

in its best interest. 52 Comp. Gen. 258 (1972). However, we have permitted an exception to the rule against waiver if it is clear that the "intended" bid would have been the lowest even though the amount of the intended bid could not be clearly proven for the purpose of bid correction. Bruce-Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 CPD 310; 52 Comp. Gen. 258, supra. But since the worksheet entries indicate a range of possible prices (up to \$200 per item), it is impossible to conclude that AII's "intended" bid would have been the lowest--especially given the closeness of AII's requested corrected bid to the amount of the second low bid. Consequently, Interior properly denied AII's request to waive its error.

Based on the foregoing, the protest is denied.


for Comptroller General
of the United States