

DECISION

20054
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-209641**DATE:** June 2, 1983**MATTER OF:** G.N. Construction, Inc.**DIGEST:**

Where mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of the mistake and of the bid actually intended by submitting worksheets (estimate sheet and telephone quotation sheets) and an affidavit showing a mistake was made when transferring figures from the telephone quotation sheet to the estimate sheet and bid as corrected remains low, there is a reasonable basis for the agency determination to allow bid correction so as to reflect intended bid, even though bid, as corrected, is only approximately 1.5 percent below second low bid.

G.N. Construction, Inc. (GN), protests the decision by the Department of the Air Force (Air Force) to permit B.E. Brown Construction, Inc. (Brown), to correct a mistake in its bid and the subsequent award of a contract to Brown under invitation for bids (IFB) No. F02601-82-B-0055. For the reasons discussed below, we deny the protest.

The IFB solicited bids to furnish all labor, appliances, equipment and materials and the performance of all of the necessary operations in connection with the updating of the pilot quarters and bathrooms in building 128 on Davis-Monthan Air Force Base, Arizona. Brown submitted the low bid of \$24,366, and GN's bid, the second low, was \$31,239. The Air Force requested that Brown verify its bid price.

Brown stated that its bid contained a mistake and requested that the bid be corrected. In support of this request, Brown submitted its estimate sheet, subcontractor telephone quotation sheets and an affidavit from the individual who prepared the bid. The worksheets reveal an

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apparent error in transferring the figure for plumbing from the telephone quotation sheet to the estimate sheet. The mistake was the transposing of numbers--the telephone quotation sheet had a bid amount of \$9,358, while the estimate sheet included \$3,958.

The Air Force permitted Brown to correct its mistake. However, the Air Force discovered an additional mistake with respect to electrical costs during the review of Brown's worksheets--the telephone quotation sheet included an amount of \$1,490, while the estimate sheet had \$1,750 as the amount. This mistake results in a \$260 decrease in Brown's bid. The Air Force found clear and convincing evidence to establish the existence of both mistakes and the intended bid (\$30,792). This includes an amount for profit and taxes carried forward in the approximate percentage from the original estimate sheet and an amount covering bid bond cost. We note here that the Brown bid is now approximately within 1.5 percent of GN's bid.

GN's protest alleges that the change in Brown's bid is not substantiated by any records. It is GN's position that Brown's bid should have been rejected and award made to GN.

Our Office has held that in order to permit correction of an error in bid prior to award, a bidder must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred and the intended price. Specialty Systems, Inc., B-204577, February 9, 1982, 82-1 CPD 114; see also Defense Acquisition Regulation (DAR) § 2-406-3 (1976 ed.). The closer an asserted intended bid is to the next low bid, the more difficult it is to clearly establish that it is the bid actually intended and, for that reason, correction is often disallowed when a corrected bid would come too close to the next low bid. R. H. Whelan Co., B-203248, August 11, 1981, 81-2 CPD 123.

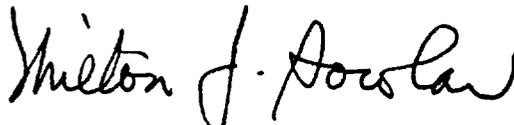
Although we have retained the right to review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. Where, as here, correction would not displace a lower bidder, the existence of the error and the bid actually intended may be established from the bid, the bidder's worksheets and other evidence submitted. Our Office has found worksheets in themselves to be

clear and convincing evidence if they are in good order and indicate the intended bid price, so long as there is no contravening evidence. See Coleman Industrial Construction Company, B-207682, September 8, 1982, 82-2 CPD 213.

Our review of the worksheets and affidavit supports the Air Force's finding that there is clear and convincing evidence of the mistakes, how they were made and the intended bid. The worksheets establish that the mistakes occurred during the transfer of figures from the telephone quotation sheets to the estimate sheet. In addition, they establish the percentage of profit and taxes used by Brown.

In regard to the bid bond cost, prior to the correction of its bid, Brown was not required by the IFB to submit a bid bond since its bid was less than \$25,000. A bid bond is required because Brown's corrected bid will exceed that amount. Since the premium to be charged is set by the surety company, not Brown, and the agency's decision to correct and our informal inquiry confirms the reasonableness of the bid bond premium, this amount was properly added to Brown's intended bid, which, as mentioned above, is established by the worksheets. See DAR § 10-102.5(v) (Defense Acquisition Circular No. 76-18, March 12, 1979). Because of this and the fact that Brown's bid, including the bid bond premium, does not displace the second low bid, we agree with the Air Force's determination to permit correction of Brown's bid.

The protest is denied.

for 
Comptroller General
of the United States