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**DECISION**

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

**FILE:** B-210413

**DATE:** June 7, 1983

**MATTER OF:** Dadson Corporation

**DIGEST:**

1. Agency reasonably permitted bid correction because bidder's worksheets clearly show that bidder made mistake in transposing \$52,935 cost to summary worksheet as \$22,935, and that \$30,000 error should be multiplied by 1.15 contingency factor. Uncertainty regarding whether bidder, which also reduced erroneous bid by \$6,329 prior to opening, would have reduced correct bid by that same amount does not prohibit correction because uncertainty is small and upper range of uncertainty (that is, no reduction) still leaves bid substantially below the next low bid.
2. Protest against awardee's capacity to perform the contract is a protest against affirmative determination of responsibility which we do not review except in circumstances not present in this case.
3. Absent a finding of nonresponsibility, a below-cost bid does not provide a reason to challenge an award.

Dadson Corporation (Dadson) protests the award of a contract by the Department of the Army (Army), Materiel Development and Readiness Command, Watervliet Arsenal, New York, to Cumberland Machinery, Inc. (Cumberland), under invitation for bids (IFB) No. DAAA22-82-B-9018, a two-step, formally advertised procurement for three gun drilling machines. Dadson contends that: (1) Cumberland should not have been permitted to correct a mistake in its bid; (2) Cumberland lacks the capacity to perform the contract; and (3) Cumberland's bid is too low.

We deny the protest in part and dismiss the protest in part.

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Cumberland submitted the low bid at \$139,284 per unit and Dadson was second low at \$233,150. The Government estimate was \$242,750. Due to the discrepancy between Cumberland's bid, Dadson's and the other higher bids, the Army advised Cumberland that it may have made a mistake in its bid. Cumberland responded that it had made a mistake in transposing \$52,935 "Govt Special Specs" labor costs to its summary worksheets as \$22,935 and requested permission to increase its bid by \$34,500--\$30,000 multiplied by 1.15, a contingency factor, because the sum of the summary worksheet figures was multiplied by 1.15. The Army permitted Cumberland to correct its bid to \$173,784 (\$34,500 plus \$139,284) and awarded Cumberland the contract.

A bid may be corrected, provided that both as corrected and uncorrected it is low and the evidence is clear and convincing as to the existence of a mistake and as to the bid actually intended. Defense Acquisition Regulation (DAR) § 2-406.3(a)(2) (1976 ed.). Although our Office retains the right of review, the authority to correct mistakes alleged after bid opening, but prior to award, is vested in the procuring agency; moreover, 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. See United Ammunition Container, Inc., B-198822, August 8, 1980, 80-2 CPD 105.

We have carefully examined Cumberland's worksheets. They provide clear and convincing evidence that Cumberland made a \$30,000 transposing error. They also support Cumberland's claim that the \$30,000 should be multiplied, as were the other figures on the summary worksheet, by 1.15. We recognize, as Dadson points out, that the worksheets are not dated; however, this is not determinative because there is no requirement that worksheets be dated. Fortec Constructors, B-203627, February 16, 1982, 82-1 CPD 132.

While the worksheets demonstrate a \$34,500 error, Cumberland made two reductions in its bid which are not explained by the worksheets. The summary worksheets indicate a total estimated bid of \$145,613. Next to the total are the words, "Bid \$144,874." Cumberland advises it

arbitrarily reduced its \$145,613 estimate for bidding purposes. In addition, Cumberland initially submitted a bid of \$144,874, and, prior to bid opening, further reduced its bid by \$5,590 to \$139,284. Cumberland explains this as an approximate 5-percent reduction in material costs. The sum of these reductions is \$6,329.

The Army and Dadson agree that the first reduction of \$739 (\$145,613 to \$144,874) creates an uncertainty as to what reduction, if any, Cumberland would have made if it had not made the transposing error. However, the Army does not consider the second reduction to be uncertain because the material costs are in a worksheet column that is separate from the labor costs column; therefore, the amount of the material costs reduction would have been the same if the transposing error regarding labor costs had not been made. The Army contends that the correction of Cumberland's bid was proper because the uncertainty regarding the first reduction is small, the second is explainable, and the bid as corrected (\$173,784) remains substantially lower than Dadson's (\$233,150) bid.

Dadson contends that both reductions create an uncorrectable uncertainty as to what reduction would have been made, but for the error under the "clear and convincing evidence" requirement, and that the correction adversely affects the integrity of the competitive bidding system.

Chris Berg, Inc. v. United States, 426 F.2d 314, 192 Ct. Cl. 176 (1970), involved a mistake in bid very similar to that involved here. The plaintiff claimed to have omitted \$41,121 in costs from its bid. The worksheets showed a computation of \$618,128, which the bidder reduced to \$616,000 for bidding purposes. (The next lowest bid was \$732,800.) This \$2,128 reduction was apparently due to the bidder's concern with the possibility of being underbid. This created an uncertainty as to the amount that the plaintiff would have bid if it had not made the mistake. The court noted that such a bidder, had he not made an error, still would be more worried about other bidders and would tend to shave his bid even more. Thus, the probable bid that would have been submitted would be over a wide range of possibilities. The Government argued, as Dadson does in this case, that such an uncertainty always precludes correction under Armed Services Procurement Regulation § 2-406.3(a)(2) (currently DAR § 2-406.3(a)(2) (1976 ed.)).

The court disagreed: "The trouble with this view is that it effectively nullifies the regulation and therefore, of necessity, must misconstrue it." The court determined that the reduction was de minimus and, thus, the same as no reduction at all. The court continued:

"\* \* \* Moreover, we think an uncertainty within a relatively narrow range is not inconsistent with 'clear and convincing evidence' of what the bid would have been. Plaintiff proposes that the 'rounded off' figure \$616,000 be reformed by adding the 'rounded off' figure of \$41,000, making a reformed contract price of \$657,000, and this suggestion we adopt as it puts plaintiff at the bottom of the range of uncertainty. \* \* \*"

Our decisions similarly interpret DAR § 2-406.3(a)(2) (1976 ed.). We require that a bidder claiming mistake submit clear and convincing evidence that an error has been made, the manner in which it has occurred, and the intended bid price. Fortec Constructors, B-203190.2, September 29, 1981, 81-2 CPD 264; Teledyne McCormick Selph, B-182026, March 6, 1975, 75-1 CPD 136. However, as in Chris Berg, Inc. v. United States, supra, we have also found, in limited circumstances, that correction is proper even when the intended bid cannot be determined exactly. WestAm Builders & Engineers, Inc., B-195207, July 14, 1980, 80-2 CPD 28; Western States Construction Company, Inc., B-191209, August 29, 1978, 78-2 CPD 149. As we stated in Fortec Constructors, supra:

"In judging the sufficiency of the evidence in those situations, we consider the circumstances of each case such as the closeness of the corrected bid and the next low bid, George C. Martin, Inc., B-187638, January 19, 1977, 77-1 CPD 39, and the range of uncertainty in the intended bid, Treweek Construction, B-183387, April 15, 1975, 75-1 CPD 227. For example, in Fortec Constructors, B-189949, November 15, 1977, 77-2 CPD 372, and in Western States Construction Company, Inc., supra, we recommended correction where there was clear and convincing evidence that certain direct

costs were omitted by mistake, but where the intended bid was not exactly ascertainable due to doubt over the amount of additional markup that should be added. In both cases the worksheets provided evidence of the approximate amount of markup that should be added, but left a narrow range of uncertainty as to the exact amount. In both cases, using the upper limit of that range of uncertainty still left the corrected bid substantially below the next low bid. \* \* \*

Cumberland has not documented that the second reduction was due to a 5-percent reduction in material costs. The basis for the second reduction is, therefore, as uncertain as the basis for the first reduction. However, the range of uncertainty is narrow because the upper range of uncertainty, that is, no reduction, would still leave Cumberland's bid substantially below the next low bid. This case is, therefore, distinguishable from 48 Comp. Gen. 748 (1969) relied on by Dadson, in which the low bid would have been increased to within \$613 of the next low bid of \$272,464. See Coleman Industrial Construction Company, B-207682, September 8, 1982, 82-2 CPD 213. Our decision in 52 Comp. Gen. 706 (1973) is similarly distinguishable. The presence of this narrow degree of uncertainty is not inconsistent with the "clear and convincing evidence" requirement. Chris Berg, Inc. v. United States, *supra*; Fortec Constructors, B-189949, *supra*. We therefore do not find that the Army's decision to permit the correction lacked a reasonable basis.

Dadson also questions Cumberland's capacity to perform the contract, a challenge to the contracting agency's affirmative determination of Cumberland's responsibility. Our Office does not review affirmative determinations of responsibility unless there is a showing of fraud on the part of the Government or an allegation of failure to apply definitive responsibility criteria. Dadson does not allege either exception here. Similarly, the question of whether Cumberland's bid is too low relates to responsibility. Absent a determination of nonresponsibility, the submission of a below-cost bid is not a valid basis upon which to challenge an award. Warfield & Sanford, Inc., B-206929, April 20, 1982, 82-1 CPD 365.

The protest is denied in part and dismissed in part.

*for* *Milton J. Aroslan*  
Comptroller General  
of the United States