21533

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

FILE: B-213749 **DATE:** February 28, 1984

MATTER OF: Harry Curley & Sons

DIGEST:

1. Where protester fails to show that procuring agency lacked a reasonable basis for determining that the evidence submitted by the low bidder, i.e., a worksheet, estimator's memorandum and affidavit, and bidder's statement, as to a mistake in bid alleged prior to award was clear and convincing evidence of that mistake, how it was made and the intended bid price, then GAO will deny protest of agency's decision to allow correction of the bid.

2. Although the rule which permits bid correction does not extend to permitting a bidder to recalculate and change its bid to include factors which the bidder did not have in mind when the bid was submitted, the prohibition on recalculation does not apply where the record shows that the bidder both considered the factor in question before bid opening and prepared figures before opening such that by reasonable extrapolation or other method there is clear and convincing evidence of what the bidder would have bid but for the mistake.

Harry Curley & Sons protests the decision by the Department of the Air Force to permit Delta Contracting Co., Inc., to correct a mistake in its apparent low bid under invitation for bids No. F20603-83-B-0039, issued by Wurtsmith Air Force Base, Michigan. We deny the protest.

The IFB solicited bids for the replacement of paneling in and the subsequent painting of 100 housing units at Wurtsmith Air Force Base. Delta submitted the apparent low bid of $249,936, while Curley submitted the apparent second low bid of $397,887. Since Delta's bid was $238,623 or 48.84 percent less than the government estimate of $488,559 and $147,951 or 37.18 percent less than Curley's next low bid, the contracting officer requested Delta to verify its bid.

In response, Delta informed the contracting officer that it had made two mistakes in computing its bid price and accordingly requested correction of the bid to $332,354. Delta claimed that it had made a mistake in computing the cost of labor and submitted a worksheet (hereinafter "memorandum") allegedly drawn up by its construction estimator in which he estimated that the work in each unit would require 39 hours of labor, not including labor required for drywall treatment, by a two-man team, i.e., 78 man-hours total per unit. Delta stated that the estimator had then been called away on urgent personal business and that, when Delta's president prepared its bid in the absence of the estimator, the president overlooked the reference to two-man teams and instead mistakenly assumed that the 39 hours enumerated in the memorandum meant 39 hours of labor by one man, i.e., 39 man-hours total per unit. Delta submitted an affidavit from the estimator confirming that Delta's president had misinterpreted the memorandum. Delta also submitted a worksheet showing an estimated cost for labor of $119,872, based upon the sum of $46,388 for 39 man-hours of labor on each of the 100 units, $48,000 for drywall treatment, and $25,484 in payroll costs (calculated as 27 percent of the sum of the cost for the enumerated man-hours plus the cost for drywall treatment rounded off to the whole dollar). Therefore, Delta claimed that in preparing the worksheet upon which its bid was based it had mistakenly understated its labor cost by $58,913, that is, by the sum of $92,776 for 78 man-hours per unit ($46,388 x 2) plus $25,049 (27 percent of $92,776 rounded down) in payroll costs, less the $58,912 ($46,388 plus 27 percent or $12,524 rounded down) actually reflected on the worksheet for these items.

Delta further claimed that it had also made a mistake in computing the cost of material. One task under the contract is to replace existing bi-fold metal doors of several widths with wood bi-fold doors painted to match the walls. Delta stated, and the worksheet indicated, that Delta had based its overall estimate for the cost of material partly on a belief that each unit required only one 4-foot bi-fold door costing $40.17, for a total cost of $4,017 to supply the bi-fold doors required for all 100 units. However, Delta apparently misread the specifications, since there are four 4-foot bi-fold doors in each unit. Delta therefore claims that in preparing the worksheet upon which its bid was based it had mistakenly understated its cost of material by $12,051, that is, by the $16,068 for the doors actually required (4 x $40.17 x 100), less the $4,017 reflected on the worksheet (1 x $40.17 x 100).

Delta also asked that its bid be increased by a further $11,354, or 16 percent of the sum of the $58,913 mistake as to the cost of labor and the $12,051 mistake as to the cost of material (rounded down), in order to maintain the 16 percent profit margin it specified on the worksheet.

The Air Force determined that Delta had submitted clear and convincing evidence that it had made the alleged mistakes in preparing its bid. However, the Air Force found that the evidence as to Delta's intended bid clearly and convincingly indicated that Delta intended to bid only $332,253, rather than the $332,354 claimed by Delta. The Air Force determined that Delta had made an arithmetical error in adding the $82,318 in corrections ($58,913 + $12,051 + 11,354 profit) to its original bid price of $249,936, resulting in a sum of $332,354 rather than the correct sum of $332,254. In addition, the Air Force reduced the $58,913 mistake as to the cost of labor to $58,912, reasoning that since Delta in its request for correction estimated the payroll costs for 39 man-hours per unit to be $12,524 ($46,388 x .27 = $12,524 rounded down) the payroll cost for 78 man-hours per unit should be $25,048.

Curley thereupon protested to our Office the Air Force's decision to allow Delta to correct its bid, alleging that to allow Delta to change its bid after opening would "ruin competitive bidding." Curley's remarks are concerned not as much with the facts of this particular case as with its general disagreement with the existing system which permits bid correction provided certain standards of proof are met. Curley believes that a bidder who alleges a mistake after bid opening should either be allowed to withdraw its bid or to perform the contract at its bid price, but not be permitted to correct the bid.

A bidder who seeks correction of an error in his bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended bid price. The closer an asserted intended bid is to the next low bid the more difficult it is to 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. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. See D. L. Draper Associates, B-213177, December 9, 1983, 83-2 CPD 662; G.N. Construction, Inc., B-209641, June 2, 1983, 83-1 CPD 598. See also Defense Acquisition Regulation § 2-406.3(a)(3).

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 G.N. Construction, Inc., supra.

Given the evidence available to the Air Force, we believe that Curley has failed to show that the Air Force lacked a reasonable basis for determining that there was clear and convincing evidence of the mistakes, how they were made and the intended bid. The record indicates that the mistakes occurred in the extension of the time estimates in the estimator's memorandum and as a result of a misreading of the specifications. Although we recognize that the rule which permits bid correction does not extend to permitting a bidder to recalculate and change its bid to include factors which the bidder did not have in mind when the bid was submitted, see General Elevator Company, Inc., 57 Comp. Gen. 257 (1978), 78-1 CPD 81, the prohibition on recalculation does not apply where, as here, the record shows that the bidder both considered the factor in question before bid opening and prepared figures before opening such that by reasonable extrapolation or other method there is clear and convincing evidence of what the bidder would have bid but for the mistake. See Paul E. Lehman, Inc., B-187922, December 22, 1976, 76-2 CPD 526; Joe Campbell Construction Co., B-183064, June 23, 1975, 75-1 CPD 377. We therefore have no basis upon which to object to the correction of Delta's bid to $332,253.

While we recognize that correction of mistakes after bid opening and the disclosure of prices may, to some extent, compromise the integrity of the competitive bidding system and pose the risk of possible abuse, nevertheless, where the evidentiary and regulatory procedures for bid correction are strictly followed, the government should have the cost benefit of a corrected bid that is still low, instead of permitting withdrawal of the obviously mistaken bid and awarding at a higher cost to the government. See Raymond L. Crawford Construction Company, B-211516, August 23, 1983, 83-2 CPD 239; Hughes & Smith, Inc., B-209870, March 22, 1983, 83-1 CPD 289.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States