

**DECISION**



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

**FILE:** B-214124

**DATE:** May 1, 1984

**MATTER OF:** Franco

**DIGEST:**

1. Contracting agency acted without a reasonable basis in correcting alleged mistake in bid where worksheets submitted by bidder contained significant unexplained discrepancies rendering the intended bid price uncertain. Although GAO has on occasion found worksheets to be the clear and convincing evidence of a mistake, the manner in which it occurred and the intended bid price required in order to permit correction, the worksheets must be in good order and there must be no contravening evidence.
2. Although questions concerning portions of worksheets which have little or no relation to the type of error alleged or to the work affected usually do not preclude bid correction where clear and convincing evidence establishes the mistake and the bid intended, nevertheless it is significant in determining the bid intended that the worksheets of a bidder alleging a mistake in regard to brickwork do not reveal what provisions were made for profit and general, unallocated overhead costs, since the apparent failure to provide for these customary items in calculating the allegedly intended bid price calls into question whether it indeed was the price intended.
3. By contrast with the clear and convincing evidence of a mistake, how it occurred and of the intended bid price required for bid correction, withdrawal of a bid for reason of mistake requires a lesser degree of proof and may be permitted if it reasonably appears that an error was made.

Franco protests the determination by the Veterans Administration to permit correction of the bid submitted by Lane Company, Inc., in response to invitation for bids No. 646-48-83 for the tuckpointing of building No. 1 at the Veterans Administration Medical Center, Pittsburgh, Pennsylvania. Franco contends that there was sufficient evidence of the manner in which the mistake occurred and of the intended bid price to permit correction. We sustain the protest.

We have been informed that building No. 1 at the medical center consists of a main building of 12 floors, two south towers of 11 floors each, a north tower of 5 floors, and east and west towers of 3 floors each. The IFB requested bids on a base item and several alternates, as follows:

Item No. I - the base bid item for all the work, including the repair, waterproofing and cleaning of the exterior masonry walls of building No. 1;

Alternate No. I - for work only on the fifth floor to the basement of the main building, plus the east, west and south towers;

Alternate No. II - for work only on the east, west and north towers;

Alternate No. III - for work only on the fifth floor to the twelfth floor of the main building, plus the south towers;

Alternate No. IV - for work only on the waterproofing and cleaning of building No. 1.

The statement of award in the IFB provided that in the event of an appropriation insufficient to fund the entire project, award would be made for any item or combination of items according to available funding. However, the VA has subsequently indicated its intent to award on the base bid item, i.e., for the entire project.

In response to the solicitation, the VA received four bids, as set forth below:

	<u>Lane</u>	<u>Franco</u>	<u>Donald Harris, Inc.</u>	<u>R.G. Friday Masonry</u>
Base bid	\$1,234,700	\$2,113,000	\$2,886,400	\$2,926,000
Alternate No. 1	670,000	650,000	705,540	680,000
Alternate No. 2	432,000	620,000	681,200	660,000
Alternate No. 3	168,000	675,000	709,875	798,000
Alternate No. 4	217,000	550,000	700,000	756,000

Since Lane's apparent low bid appeared out of line with the government estimate of \$2,875,000 and with the other bids, the contracting officer requested by telephone that Lane verify its bid. After inquiring and learning the amount of the next low bid, Lane promised to review its bid.

Lane subsequently claimed that it had made a \$700,000 mistake in addition which resulted in a base bid of \$1,234,700, rather than the \$1,934,700 intended, and requested withdrawal of its bid. In support of its claim, Lane submitted its "summary sheet" or "breakdown" for the base bid item. On this sheet were written 18 entries: either tasks to be performed under the contract ("Caulking," "Stone Setting") or other elements of expense ("Crane Rental", "Telephone"), beside each of which appeared a lump sum figure. The first four of the 18 entries, for example, were:

Demolition & Removals	\$ 37,300
Brickwork	900,000
Set Coping	94,000
Cleaning	88,000

The actual total of the 18 entries is \$1,934,700. At the foot of the list, however, appears the total \$1,234,700, a difference of \$700,000. In explanation of this discrepancy, Lane also submitted to the VA an adding machine tape on which 18 entries were added to a total of \$1,234,700, which Lane alleged it carried over to the foot of its breakdown sheet and then into its bid. On the adding machine tape, the amount representing "brickwork" is entered as \$200,000 instead of \$900,000, resulting in the \$700,000 discrepancy.

The contracting officer, concerned that Lane had submitted merely a listing of its total cost breakdown rather than its "original worksheets," informed Lane that the evidence submitted was insufficient. In response to questions about whether the mistake on the base bid item was also reflected on the alternate items, Lane stated that, in its hurry to complete its bid, it had made a mistake on each alternate as well as on the base item. The contracting officer thereupon requested copies of the worksheets for the alternate items, with the mistakes on each indicated, and warned that failure to provide the information would force the contracting officer to recommend against permitting withdrawal of Lane's bid.

Lane subsequently submitted its worksheets for the base bid item and for each of the alternate bid items. These have been provided for our examination but not to the protester on the basis of Lane's claim that they contain business information proprietary to it. Our discussion of the contents of these worksheets therefore is limited.

The worksheets for the base item and for alternates No. 1 and 2 indicate that Lane estimated that 6,767 square feet of brickwork at \$133 per square foot would be required for each item. Although the extension of this rate actually yields a total of \$900,011, which was rounded off to \$900,000 on the worksheet for the base item, a sum of only \$200,000 was entered under brickwork on the worksheets for alternates No. 1 and 2. These latter worksheets have been annotated, presumably in response to the contracting officer's request, to show a "correct" sum of \$900,000 for brickwork, with \$700,000 accordingly added to the totals of the cost items for each alternate, resulting in a corrected bid of \$1,370,000 for alternate No. 1 and \$1,132,000 for alternate No. 2. On the worksheet for alternate No. 3, Lane estimated that 1,607 square feet of brickwork at \$140 per square foot would be required. However, although an extension of this rate actually yields \$224,980, Lane only entered \$50,000 on the worksheet. By subsequent annotation, Lane corrected this total to \$225,000 and accordingly added \$175,000 to its bid for alternate No. 3, for a total of \$343,000. The worksheet for alternate No. 4 contains no

annotations indicating any mistake. To recapitulate, the information provided by Lane to the contracting officer indicates the following actual and claimed intended bid amounts:

<u>Item</u>	<u>Actual Bid</u>	<u>Claimed Intended Bid</u>
Base bid	\$1,234,700	\$1,934,700
Alternate No. 1	670,000	1,370,000
Alternate No. 2	432,000	1,132,000
Alternate No. 3	168,000	343,000
Alternate No. 4	217,000	217,000

The contracting officer submitted the above documents to the VA headquarters in Washington, D.C., with the findings, based upon the discrepancy between the VA estimate of \$2,875,000 and Lane's original bid of \$1,234,700, that there was a mistake in Lane's bid and that Lane could not perform at the bid price. The contracting officer therefore recommended that Lane be allowed to withdraw its bid.

Lane, however, subsequently expressed a desire for contract award if permitted to correct its bid to \$1,934,700. Officials at VA headquarters in Washington examined "the worksheets submitted by Lane," found that clear and convincing evidence existed that Lane had intended a bid of \$1,934,700, and therefore determined that Lane should not be allowed to withdraw its bid but that instead its bid should be corrected to \$1,934,700.

Although Franco agrees that there was a mistake in Lane's bid, it nevertheless contends that the evidence as to the manner in which the mistake occurred and as to the bid intended was not the clear and convincing evidence required for bid correction.

An asserted mistake in bid alleged prior to award may be corrected where there exists clear and convincing evidence that a mistake was made, of the manner in which the

mistake occurred, and of the intended bid price. 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 Federal Procurement Regulations § 1-2.406-3(a) (amend. 165, June 1976). 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 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 was no reasonable basis for the decision. See D. L. Draper Associates, *supra*; G. N. Construction, Inc., *supra*.

Generally, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. See G.N. Construction, *supra*. Our review of the worksheets considered by the VA, however, including the alternate item worksheets without which the contracting officer was unwilling to allow even withdrawal, as well as of Lane's statements, reveals significant and substantially unexplained discrepancies and uncertainties.

First, the worksheets submitted by Lane, which reflect an estimate of 6,767 square feet of brickwork at \$133 per square foot that would be required for the base item and for both alternates No. 1 and 2, have a total cost of \$900,000 for this work entered on the base item worksheet but only \$200,000 on the alternate item worksheets. If \$900,000 is the intended estimate for brickwork for these items,<sup>1</sup> then Lane must not only have made a \$700,000 mistake in regard to the base bid, a mistake which Lane has explained to be one of addition, but

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<sup>1</sup>Franco alleges that the "9" in the \$900,000 entry for brickwork on the base item worksheet is in a different handwriting than all the other 9's and other figures on the worksheets. While there may be certain dissimilarities, our Office is not in a position to render an expert opinion in this regard.

also have made unexplained mistakes on the worksheets for the two alternate items. While it is conceivable that the worksheets for the alternate items were prepared after the basic bid was tallied, and that the brickwork price for the alternate items was taken from the adding machine tape, Lane has not provided that or any other explanation for the discrepancy either to the VA or to this Office.

Similarly Lane has not explained how the separate mistake for brickwork under alternate No. 3 occurred.

Moreover, Lane has failed to explain why its worksheets show the same amount of brickwork at the same cost to be required under the base bid item which included all the work in building No. 1, as under alternates No. 1 and 2, which included work on significantly lesser portions of the building. Franco alleges that, depending on the type of brickwork, the brickwork required under alternate No. 1 represented no more than 54 percent, and that required under alternate No. 2 no more than 66-1/2 percent, of the brickwork required under the base item. Our examination of the blueprints for the project suggests that brickwork in need of repair is generally to be found in all portions of building No. 1; consequently, it is not apparent why Lane's worksheets should indicate the same brickwork under the first two alternate items as under the base item.

We further note that Lane's allegedly intended bid on the alternate items, as asserted by Lane, would be greatly out of line with the other bids on those items, as indicated below:

	<u>Lane</u>	<u>Franco</u>	<u>Harris</u>	<u>Friday</u>
Alternate No. 1	\$1,370,000	\$650,000	\$705,540	\$680,000
Alternate No. 2	1,132,000	620,000	681,200	660,000
Alternate No. 3	343,000	675,000	709,875	798,000
Alternate No. 4	217,000	550,000	700,000	756,000

Although we recognize that the VA intends to make award on the base bid item and not on the alternate bid items, we believe that these discrepancies are significant because, as was apparently recognized by the contracting officer when she indicated that she would recommend even against withdrawal if Lane failed to supply the worksheets for the alternates, the intended bid on the whole must necessarily bear some relation to the intended bid on the

parts. Thus, if the allegedly intended bid on the alternate items is open to question, so is the allegedly intended bid for the base item.

We also note that while the worksheets include entries for the costs of photos, supervision, telephone service, transportation and lodging, they include no entry for general, unallocated overhead or for profit. Although questions concerning portions of a bidder's worksheets which have little or no relation to the type of error alleged or to the part of the work affected usually do not preclude bid correction where clear and convincing evidence establishes the specific mistake and the actual bid intended, see Active Fire Sprinkler Corporation, 57 Comp. Gen. 438 (1978), 78-1 CPD 328, we believe it is significant in determining the bid intended that the worksheets used by a bidder to prepare its bid do not reveal what provisions the bidder intended for profit and general, unallocated overhead costs, since the apparent failure to provide for these customary items in the calculations used to arrive at the allegedly intended bid price calls into question whether that was indeed the bid price intended. Cf. Camp Lewis Tent & Awning Company, B-182047, September 17, 1974, 74-2 CPD 174 (profit and overhead considered); but see Active Fire Sprinkler Corporation, B-187039, August 17, 1976, 76-2 CPD 168. We note that Lane has declined the opportunity to explain why its worksheets include no apparent provision for profit or general, unallocated overhead, and thus we are uncertain whether these factors were considered in calculating the costs listed on its worksheets, such as for brickwork or supervision, see AAA Engineering & Drafting, Inc., B-191658, June 23, 1978, 78-1 CPD 460 (profit and overhead included in weighted labor costs), or whether in fact Lane by mistake or otherwise failed to provide for profit and general, unallocated overhead in calculating its bid price. Cf. Camp Lewis Tent & Awning Company, supra (restated principle that correction may be permitted to reflect omission of direct costs without any increase for profit where the bidder requests correction in such form and the bid would remain low whether or not amended to reflect the profit).

Given these discrepancies and uncertainties, we cannot conclude that the VA had a reasonable basis for determining that there was clear and convincing evidence of Lane's intended bid such as to permit correction. Thus, we need not address Franco's contention that correction should be denied because it would place Lane's bid price too close to Franco's bid price and thereby threaten the integrity of the competitive bidding system. Nor need we consider Franco's further allegations that the VA improperly relied upon uncertified, undated copies of the worksheets, unsupported by sworn affidavits.

By contrast with the clear and convincing evidence required for bid correction, withdrawal of a bid requires a lesser degree of proof and may be allowed if it reasonably appears that an error was made. See Pneumatic Construction Company, B-207871, August 31, 1982, 82-2 CPD 193. Given the disparity in bid prices and the statements and worksheets submitted by Lane, we believe that the record clearly indicates that there was a mistake in Lane's bid, though the evidence is insufficient to support bid correction. Accordingly, Lane's bid may be withdrawn, but not corrected.

The protest is sustained.

*for Harry D. Van Cleave*  
Comptroller General  
of the United States