

DECISION

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

agency
DF
28502

FILE: B-214063

DATE: June 11, 1984

MATTER OF: Edmonds Electric Company

DIGEST:

1. Bidder seeking correction of a bid is not permitted to recalculate and change the bid --based on an alleged industry standard of which the agency is unaware--to include factors that were omitted when the bid was prepared and submitted.
2. Contracting officer has no obligation to query the bidder as to its willingness to accept an award at the original bid price where the bidder only requested correction of the bid prior to award.

Edmonds Electric Company protests the award of a contract to any firm other than Edmonds under General Services Administration (GSA) invitation for bids (IFB) No. GS-04B-84016. Edmonds, the low bidder, sought a \$32,200 upward adjustment of its bid for a cost factor that the firm had omitted when the bid was initially prepared and submitted to GSA. We believe the agency's determination not to permit correction was reasonable, and that award to the second low bidder is proper.

The IFB solicited bids for cleaning and replacing light fixtures at the Federal Building, Memphis, Tennessee. The three low bids received on December 7, 1983, were as follows:

Edmonds Electric Company	\$43,800
Haines Electric Co., Inc.	\$78,840
Superb Maintenance Services, Inc.	\$84,249

The balance of the bids received ranged upwards to \$178,590. After correction to \$76,000 as requested, the Edmonds bid would remain low by \$2,840.

Because of the disparity between Edmonds' bid and those of the other bidders, the contracting officer wrote

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Edmonds to inform the firm that a possible mistake existed in its bid, and to request verification of the bid price.

Edmonds replied that its bid did contain an error, and requested an upward adjustment to reflect an alleged industry practice of including a cost factor in a bid for overhead and profit allocable to certain government furnished equipment (GFE), which had been inadvertently omitted. In support of the request, Edmonds provided the agency with a letter explaining the nature of the asserted error, and with a change order under an unrelated Air Force contract that contained provisions for overhead and profit allocable to GFE. Edmonds did not submit any original worksheets, however. Instead, Edmonds recalculated its bid to include the omitted overhead and profit and submitted an estimate sheet, prepared after the fact, to establish its intended bid price.

GSA reviewed the evidence in accordance with Federal Procurement Regulations (FPR), 41 C.F.R. § 1-2.406-3(a)(2) (1983), (which provides for correction of a bid that is low both as corrected and uncorrected, if the evidence is clear and convincing both as to the mistake and the bid actually intended), and determined that neither Edmonds' explanation nor the change order established Edmonds' intended bid price. Rather, the agency found that Edmonds was seeking to have its bid corrected to include a cost item that was never a factor in the original bid preparation. Accordingly, GSA concluded that Edmonds' documents did not clearly and convincingly establish the intended bid price, and that the bid could not be corrected. However, the agency did consider that the evidence presented was sufficient to permit Edmonds to withdraw the bid.

Edmonds argues that the evidence it provided, when viewed as a whole, clearly shows the existence of the mistake and the intended bid price. In this regard, Edmonds argues that this situation is similar to that in our decision in B-150043, Oct. 11, 1962, where this Office permitted correction of a bid based on the bidder's allegation that it neglected, in calculating its bid price, to consider a factor that the firm asserted always was considered as a standard industry pricing practice.

The primary authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agencies. See FPR, 41 C.F.R. § 1-2.406-3(a). Since the weight to be given the evidence in support of an asserted mistake is a question of fact to be considered by the administratively-designated evaluator of evidence, we

will not disturb the evaluator's decision unless there is no reasonable basis for it. Murphy Brothers, Inc.--Reconsideration, 58 Comp. Gen. 185 (1978), 78-2 CPD ¶ 440.

Based on the record, it is clear that the omitted cost factors were never considered by Edmonds in the calculation of its bid. Indeed, it is not at all clear what cost factors were included, since the protester's "worksheet" was prepared after the fact. The rule allowing bid correction does not extend to situations where after bids are opened the bidder discovers that it omitted a cost factor in calculating the bid price. See Columbus Building and Supply Co., B-188477, Aug. 2, 1977, 77-2 CPD ¶ 70. As we stated in 37 Comp. Gen. 650, 652 (1958):

" . . . bids may not be changed after they are opened, and the exception permitting a bid to be corrected upon sufficient facts establishing that a bidder actually intended to bid an amount other than that set down on the bid form . . . does not extend to permitting a bidder to recalculate and change his bid to include factors which he did not have in mind when his bid was submitted. . . ."

The evidence in this case simply does not establish an intended bid other than originally submitted. Accordingly, we find that GSA properly denied Edmonds' correction request. In this regard, in B-150043, supra, the case relied on by Edmonds, the contracting agency's engineers supported the bidder's position as to the industry practice. Here, however, GSA states that it is unaware of the asserted industry practice and points out that Edmonds' submission of one change order under an unrelated contract did not establish the existence of any standard industry practice. We have no basis to disagree, and we therefore find the case Edmonds cites to be inapposite.

Moreover, we note that correction of Edmonds' bid by \$32,200--from \$43,800 to \$76,00--would bring the bid to within only \$2,840 of the next low bid. We have stated that the closer an asserted intended bid is to the next low bid the more difficult it is to establish that it was the bid actually intended, so that correction often is disallowed when it would bring the bid too close to the next low bid. See, e.g., D. L. Draper Associates, B-213177, Dec. 9, 1983, 83-2 CPD ¶ 662.

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The protest is denied. .

Milton J. Acosta
for Comptroller General
of the United States