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**DECISION**



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

**FILE:** B-218482                      **DATE:** August 12, 1985  
**MATTER OF:** S.W. Electronics and Manufacturing Corporation

**DIGEST:**

1. Agency's decision not to release to protester certain documents submitted by low bidder in support of mistake correction will not prevent GAO review of the propriety of the agency's decision to permit correction.
2. Procuring agency's determination to permit correction of mistake in low bid was proper where agency reasonably determined that low bidder's worksheets and affidavits presented clear and convincing evidence that the cost for a number of parts needed to manufacture battery chargers was omitted from bid price.
3. Allegation that low bidder submitted an unreasonably low bid that should be found non-responsive does not provide a legal basis to sustain a protest. Moreover, in view of GAO finding that contracting agency properly allowed upward correction of awardee's bid, this protest issue is academic.

S.W. Electronics and Manufacturing Corporation (SW) protests the decision by the United States Army (Army) to permit United Telecontrol Electronics, Inc. (UTE), to correct a mistake in its low bid under invitation for bids (IFB) No. DAAB07-84-B-0308, for 742 battery chargers with an option for an additional 742 units. The Army intends to make an award to UTE at the corrected bid price.

We find the protest without merit.

Twelve bids were received at bid opening on November 14, 1984. UTE's bid at a total price of \$4,846,354 was the lowest and SW's bid at a total price of \$5,996,440.68 was second low; UTE's bid of \$2,861 per unit was also the lowest unit price bid while SW's bid of \$3,977.77 per unit was second low. Bids were evaluated for

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award purposes on the basis of total price for all items. The contracting officer reports that upon examination of the bids received, he suspected that a mistake may have been made in UTE's bid since UTE's price for each hardware unit was \$1,116.77 lower than the next low hardware unit price. Therefore, he asked UTE to verify the correctness of its bid price.

By letter of November 27, 1984, UTE claimed that its bid contained an error in price and requested that the contracting officer permit an upward correction of its hardware unit price from \$2,861 to \$3,515.60. UTE submitted its worksheets, a notarized statement that the worksheets were the original documents for the referenced solicitation, a priced bill of materials, and a computer printout to reflect the existence of a mistake and the intended bid.

The protester objects to any correction of UTE's bid stating that correction after bid opening would compromise the integrity of the competitive procurement system and is unfair to other bidders. SW claims that UTE cannot manufacture the items at its originally quoted price because the price is so far below other prices received and, therefore, asserts that the contracting officer should find UTE's bid to be "nonresponsive" because it is unreasonably low.

The Army has provided our Office with copies of all documents submitted by UTE in support of its mistake in bid claim. These documents include UTE's worksheets, a quote sheet, bill of materials and a computer programmer analysis. SW has objected to the Army's refusal to provide it with copies of these documents despite the protester's request for them. Our office has consistently held that the decision whether to release a competitor's worksheets and other data relating to labor, overhead, general and administrative expenses and profit is a matter for the contracting agency, not our Office, to resolve. However, where such documentation is not provided to the protester, we will review the worksheets in camera to determine the propriety of the agency's decision to permit correction. Darwin Construction Co., Inc., B-213314, Feb. 7, 1984, 84-1 C.P.D. ¶ 154.

The authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. The weight to be given the evidence submitted in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of the evidence whose decision will not be disturbed by our

Office unless there is no reasonable basis for the decision. Specialty Systems Inc., B-204577, Feb. 9, 1982, 82-1 C.P.D. ¶ 114.

As required by Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(g)(3) (1984), the data submitted by UTE was referred to the Office of the Command Counsel, Army Materiel Command, for an administrative determination of whether to permit correction of the alleged mistake. In a sworn statement, UTE's president stated that due to a computer multiplier error, its computer did not multiply the cost of each component part for the subassemblies shown in drawings SM-B-889019 and SM-B-889037 by a multiplier of five (five of these subassemblies are required for each battery charger). Instead, the component parts were multiplied by a factor of one; therefore, UTE costed only one subassembly on its priced bill of materials. UTE claims that the cost per charger for the four additional component parts is \$654.60 and seeks an upward adjustment in its hardware unit price to \$3,515.60.

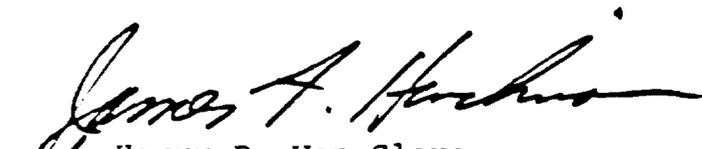
The Command Counsel determined that UTE's worksheets and other data presented clear and convincing evidence of the existence of a mistake and the actual bid intended. The bid as the Army would permit it to be corrected would result in a hardware unit price of \$3,515.45, which is 15 cents less than UTE's requested correction and would still be lower than the bid of the next low per unit bid. The 15-cent difference between UTE's requested correction and the recalculated bid by the Command Counsel is based on UTE's mistaken conclusion that two additional 15-cent parts were needed to correct the pricing of the components shown on drawing SM-B-889073 while the Army's price analyst found that only one additional 15-cent part was needed. Therefore, on April 5, 1985, the Command Counsel authorized the contracting officer to permit correction of UTE's bid from \$2,861 to \$3,515.45 per hardware unit.

We have stated that whenever upward correction of a bid is requested and the bidder is low, with or without correction and no higher bidder is prejudiced by allowing correction, the existence of the error and the bid actually intended may be established from the bid, the bidder's worksheets and any other data that establishes the elements needed for correction. Raymond L. Crawford Construction Co., B-211516, Aug. 23, 1983, 83-2 C.P.D. ¶ 239. The bidder must show by clear and convincing evidence that an error was made, the manner in which the error was made, and the intended bid price. Id.; FAR § 14.406-3(a).

In reviewing all the data submitted to our Office, we conclude that there was a reasonable basis for the Army's decision to allow correction. We were able to verify from the data submitted to our Office that UTE omitted from its bid the cost for four of the five subassemblies required for each battery charger; moreover, we were able to ascertain the intended bid price from UTE's papers. We find, therefore, that the Army's decision to permit UTE to correct its bid is proper and we will not object to an award based on the bid as corrected.

SW's allegation that UTE's bid price is unreasonably low provides no legal basis for protest since it is well established that a contracting agency may accept such a bid if the bidder is found to be responsible. See General Telephone Company of California, B-218571.2, May 9, 1985, 85-1 C.P.D. ¶ 518. Whether a bidder will be able to meet contract requirements in view of its offered price is a matter of responsibility not responsiveness. An agency must make an affirmative determination, before award, that the bidder is responsible. GAO will not review such a determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria set forth in the solicitation were not met. Envirotronics, Inc., B-215622, July 3, 1984, 84-2 C.P.D. ¶ 18. SW has made no such showing here. Moreover, since the Army intends to award to UTE at the higher corrected price, and in view of our finding that the Army's decision to allow upward correction was reasonable, this protest issue is academic. See Consolidated Maintenance Co., B-217140, Jan. 22, 1985, 85-1 C.P.D. ¶ 84. Accordingly, we dismiss this portion of the protest.

The protest is denied in part and dismissed in part.

  
 Harry R. Van Cleve  
 General Counsel