

DECISION

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

FILE: B-218610 **DATE:** October 2, 1985

MATTER OF: Vrooman Constructors, Inc.

DIGEST:

Where protester--awarded a contract with the stipulation that GAO could review the agency's denial of a request to correct mistakes in the bid--presents clear and convincing evidence of its mistake, and its alleged intended bid falls within a relatively narrow range of uncertainty that is not inconsistent with the clear and convincing evidence rule, GAO recommends reformation to correct the mistakes in bid.

Vrooman Constructors, Inc. (Vrooman), requests our review of the Department of the Army Corps of Engineers' (Corps) denial of its preaward request to correct mistakes in its low bid that was submitted in response to invitation for bids (IFB) No. DACA45-85-B-0043 issued by the Corps for a construction project at F.E. Warren Air Force Base, Cheyenne, Wyoming. Notwithstanding the alleged mistake, Vrooman was awarded the contract at its bid price of \$8,435,000. The parties, however, stipulated in the contract that Vrooman could present its preaward claim for bid correction to an appropriate authority, thus preserving Vrooman's right to submit the matter to our Office.

We find that Vrooman's contract should be reformed to correct the mistakes.

The facts are not in dispute. Six bids were received in response to the IFB, ranging from \$8,435,000 to \$15,250,000. Vrooman, the low bidder, was \$1,153,000 (12 percent) below the government's estimate of \$9,588,000 and \$1,102,000 (11.6 percent) below the next low bid. Because of these differences, the Corps asked Vrooman to review and verify its bid.

Vrooman explains that minutes before bid opening, Vrooman had developed a written "Final Sheet" containing a base-line price of \$8,950,800 based on summary sheets for

the various elements of the bid. These sheets contained a detailed list of items needed for each major element of the construction project and the costs of those items. Anticipating possible lower price quotations from potential subcontractors for four elements (excavation, mechanical, electrical, and steel), Vrooman broke those elements out of its final worksheet and left spaces for reductions. Vrooman lined out two of those areas, keeping the original amounts, but did reduce the costs of mechanical and steel based upon telephonic quotations from other sources.

In both cases, the quotations omitted certain items and covered only part of the work within the element. The Vrooman employee preparing Vrooman's bid received the summaries of the quotations close to the deadline for submitting a bid and, in his haste, failed to notice that the quotations covered only part of the steel and mechanical elements of the work. He reduced each element by the difference between the previously entered amount and the new quotation, which had the effect of reducing the base-line price by \$515,800 to the amount actually bid. Vrooman therefore requested correction of its bid to include the \$515,800 and to reflect the original base-line price.

The Corps, while acknowledging that the mistakes were made, denied Vrooman's request for bid correction because Vrooman's worksheets showed it had received other quotations for the two elements that were a total of \$79,300 lower than the amounts for those items in the base-line price. The Corps decided that Vrooman had failed to establish how the cost of the omitted work would ultimately have been calculated. The Corps therefore denied Vrooman's request for correction since the bidder had failed to meet its burden of providing clear and convincing evidence of the actually intended bid.

Applicable regulations provide that a mistake in bid alleged before award may be corrected where the bidder presents clear and convincing evidence establishing both the existence of the mistake and the bid actually intended, provided that the correction would not result in the displacement of a lower bid. Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(a) (1984).

We agree with the Corps that a bidder generally may not obtain correction, for even a clearly mistaken bid, based on computations or recomputations performed after bid opening to cover items for which the bidder did not intend precise

price factors before bid opening. See General Elevator Company, Inc., 57 Comp. Gen. 257 (1978), 78-1 CPD ¶ 81; Amtech Elevator Services, B-216067, Jan. 11, 1985, 85-1 CPD ¶ 70; J.W. Creech, Inc., B-191177, Mar. 8, 1978, 78-1 CPD ¶ 186. This Office has also recognized that, in limited circumstances, correction may be proper even though the intended bid cannot be determined exactly, provided there is clear and convincing evidence that the intended bid would remain low. R&R Contracting, Inc., B-217412, Mar. 1, 1985, 85-1 CPD ¶ 260. We have permitted correction where an intended bid is clearly and convincingly shown to fall within a narrow range of uncertainty below the next low bid. See Western States Construction Co., Inc., B-191209, Aug. 29, 1978, 78-2 CPD ¶ 149. The sufficiency of evidence must be reviewed in relation to how close the top of the range of uncertainty is to the next low bid. See Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125; Daadson Corp., B-210413, June 7, 1983, 83-1 CPD ¶ 618. The closer the top of the range of uncertainty is to the next low bid, the greater the risk associated with trying to establish an intended bid, and correction may be disallowed where the upper range of uncertainty is too close to the next low bid. Sam Gonzales, Inc., B-216728, *supra*; Fortec Constructors, B-203190.2, Sept. 29, 1981, 81-2 CPD ¶ 264.

In this case, there is no dispute that Vrooman's spread sheets and final sheet show that Vrooman had intended to price the items which were mistakenly omitted from the bid price. Further, it is not contested that Vrooman shortly before bid opening had selected subcontractors' quotations, that included the subsequently omitted items. While portions of other quotations by themselves or in combination with other quotations might have yielded lower prices for the omitted items, thus creating some uncertainty as to the intended bid, the low range of uncertainty (as indicated by Vrooman's own calculations after bid opening) is a bid price of \$8,871,500--that is \$79,300, or 1 percent, less than the alleged intended bid of \$8,950,800. The alleged intended bid which represents the top of the range of uncertainty is still \$586,200, or more than 6 percent less than the next low bid. Thus, the undisputed circumstances of this case are that Vrooman's intended bid clearly falls within a narrow range of uncertainty of which the upper end is significantly lower than the next low bid.

We believe that under these circumstances, correction is not inconsistent with the standard of clear and convincing evidence of the actually intended bid. We agree with the Corps, however, that Vrooman might have used the other available quotations if it had been aware of its

mistakes and believe that correction should place the contractor at the bottom of the range of uncertainty. See Chris Berg, Inc. v. United States, 426 Fed. 2d 314, 316 (Ct. Cl. 1970).

We therefore recommend that the Corps reform Vrooman's contract to increase the price by not more than \$436,500 to a total price of \$8,871,500, representing the bottom of the range of uncertainty as to Vrooman's actually intended bid.

Milton F. Auster
for Comptroller General
of the United States