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DECISION

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

FILE: B-218228.4 **DATE:** February 13, 1986

MATTER OF: Colbar, Inc.--Reconsideration

DIGEST:

The General Accounting Office denies a request for reconsideration of a decision and affirms that decision recommending termination of an incumbent's contract because the agency should have allowed waiver of the protester's mistake claim, where the incumbent's request fails to establish convincingly that the prior decision contains errors of law or of fact that warrant its reversal or modification.

Colbar, Inc., requests reconsideration of our decision United Food Services, Inc., B-218228.3, Dec. 30, 1985, 65 Comp. Gen. ___, 85-2 CPD ¶ 727, in which we sustained United's protest challenging the rejection of its bid as nonresponsive and recommended termination of a contract awarded to Colbar for full food and dining services at Fort Knox, Kentucky.

We deny the request for reconsideration.

In making our recommendation, we found that the Army should have allowed United to waive the omission of option year prices for an item (covering one of a total of 123 buildings) added to the bid schedule by an acknowledged amendment. Since United's intended price within an extremely narrow range was determinable from the pricing pattern of the bid itself and since its intended bid would have been the lowest, we sustained United's protest. This, we stated, prevented an obvious clerical error of omission from being converted to a matter of responsiveness where the bidder clearly intended to obligate itself to provide the services in question.

In its reconsideration request, Colbar contends that United's bid was not responsive because the solicitation specifically required bidders to include prices for each line item in the bid schedule. According to Colbar, we failed to apply established precedent of this Office concerning such a requirement. Colbar further alleges that

we should not have applied the mistake in bid procedures in this case because United did not present clear and convincing evidence that it had formulated a price for the omitted item and its intended price could not be determined from the bid itself.

In order to prevail in a request for reconsideration, the requesting party must convincingly show either errors of law or of fact that warrant reversal or modification of our prior decision. DLI Engineering Corp.--Reconsideration, B-218335.2 et al., Oct. 28, 1985, 85-2 CPD ¶ 468. Colbar has not done so here.

First, in our decision, we did not ignore established precedent concerning responsiveness. We specifically recognized the general rule, relied on by Colbar and supported in cases cited by that firm, that a bid must be rejected as nonresponsive if it does not include a price for every item requested by the IFB. However, we relied on a limited exception to that rule under which a bidder may be permitted to correct an omitted price where a pattern of pricing, determinable from the bid itself, indicates the possibility of error, the nature of the error, and the intended bid price. Moreover, we noted that where the intended bid would have been the lowest, even though the amount of the intended bid cannot be precisely proven, we have long recognized an exception to the general rule that a bidder may not waive a mistake claim after opening and stand on its original bid price. Bruce Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 CPD ¶ 310.

Our application of mistake in bid procedures to United's bid was based on our review of the firm's base and option year prices for buildings in the same category of dining facility as the omitted item. The pattern of pricing that was discernible from the bid itself established the existence and nature of United's error within an extremely narrow range. No external evidence of United's price for the option years was required. The firm's prices were identical for all 4 option years, the increase in option years over base year prices for the omitted building was ascertainable within a $4 range, and United's intended price would have been the lowest by 11 percent. We concluded that even though the amount of the intended bid could not be precisely proven for the purpose of bid correction, the firm clearly had intended to obligate itself to provide the services in question. Pursuant to the rule in Bruce Andersen Co., Inc., supra, since United's intended bid would have been lowest, we sustained the protest, allowing United

to waive its mistake claim and stand on its original bid price.

Colbar has not shown that our prior decision contains errors of law or of fact. We therefore deny the request for reconsideration of our decision, with its recommendation that corrective action be taken.

Harry R. Van Cleve
General Counsel