

logant

**DECISION**



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

**FILE:** B-221317 **DATE:** February 28, 1986

**MATTER OF:** Montgomery Construction Company, Inc.

**DIGEST:**

1. 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. The worksheets of a bidder alleging a mistake in regard to construction work that do not reveal what provisions were made for profit, overhead, and insurance, do not meet the high standard of proof required before bid correction is authorized. Consequently, it is not reasonable for the contracting agency to permit correction since the bid price actually intended remains uncertain.
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.

Montgomery Construction Company, Inc. protests the decision of the Veterans Administration (VA) to permit CNH Construction Company to correct a mistake in its low bid under invitation for bids (IFB) No. 84-1031. The IFB was for construction work involving asbestos removal, reinsulation, and general alterations to various buildings at the VA Medical Center, Tuskegee, Alabama.

We sustain the protest.

034722

Three bids were received at bid opening on September 26, 1985. CNH's bid of \$497,722 (bid item No. 1)<sup>1/</sup> was low. Montgomery's bid of \$1,098,934 was next low. The government estimate was \$1,300,000. Shortly after bid opening, the contracting officer, suspecting a mistake in CNH's bid, requested the firm to verify its bid. On October 2, a CNH official advised the contracting officer by mailgram that the CNH bid contained an error and that the intended price was \$917,872. CNH alleged that two estimators had prepared its bid. One estimator had prepared the prices for the mechanical portion of the project and the other had prepared the prices for the general construction portion of the project. The estimator who had prepared the mechanical portion of the project was given the worksheets for the general construction portion of the project by the other estimator so that the two sets of prices could be added together to arrive at a total bid price; however, he mistakenly failed to do so. Accordingly, CNH stated that its bid reflected only the mechanical portion of the project. CNH further explained that its estimators were at that time also preparing bids on other similar VA construction projects which involved only mechanical work and that this contributed to the mistake.

On October 14, CNH provided the contracting officer with its original worksheets, sworn affidavits, and other documents in support of its request for correction of its bid, including an affidavit certifying that the worksheets were the original documents that CNH used to estimate its bid prior to bid opening. The information concerning CNH's alleged mistake in bid was submitted to the VA's Office of Procurement and Supply in Washington. In its finding, that office determined that CNH had submitted clear and convincing evidence of the mistake, the manner in which it occurred, and the intended bid. Therefore, the VA determined that CNH could correct its bid to \$917,872.

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

---

<sup>1/</sup> The solicitation also contained two alternate deductive items. The propriety of the correction of these two items need not be separately discussed since the identical issue is presented by CNH's request for correction of Bid Item No. 1. Further, the protester has not put the correction of these two items at issue apart from the propriety of the correction of bid item No. 1.

the mistake occurred, and of the intended bid price. See D. L. Draper Assocs., B-213177, Dec. 9, 1983, 83-2 CPD ¶ 662; G. N. Constr., Inc., B-209641, June 2, 1983, 83-1 CPD ¶ 598. 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 John Amentas Decorators, Inc., B-190691, Apr. 17, 1978, 78-1 CPD ¶ 294.

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. Constr., B-209641, supra. Our review of both sets of worksheets considered by the VA, however, reveals significant omissions and uncertainties.

We believe that it is clear from the bid that an error was made. In addition, the record shows that CNH prepared two sets of worksheets, one for the mechanical portion of the project, and one for the general construction portion of the project. These worksheets contain detailed cost elements for both types of work comprising the project. Further, when the cost totals on the worksheets for the mechanical portion are added, the total figure corresponds to the initial allegedly mistaken bid price of \$497,722. When the cost totals for both sets of worksheets are added, the total figures corresponds to the requested corrected amount of \$917,872.

However, our review of both sets of worksheets clearly indicates that the worksheets only contain raw subcontractor quotes and other costs; they include no entry whatsoever for overhead or profit. Further, only one set of worksheets contains a 15 percent factor for insurance costs. We believe it is significant in determining the bid intended that the worksheets submitted by CNH to the agency in support of its request for correction do not reveal what provisions the bidder intended for profit and overhead costs, since, as stated above, the apparent failure to provide for these items in the calculations used to arrive at the allegedly intended bid price calls into question whether that was indeed the bid price actually intended. Franco, B-214124, May 1, 1984, 84-1 CPD ¶ 488. For example, the addition of a 15 percent insurance factor to the mechanical portion of its bid would alone add almost an additional \$75,000 to the bid price.

33685

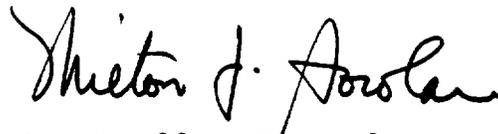
B-221317

4

The Federal Acquisition Regulations, 48 C.F.R. § 14.406 (1984) requires a high standard of proof--clear and convincing evidence of the mistake and the bid actually intended--before correction is authorized, in order to protect the competitive bid system from abuse. Thus, where this high standard of proof has not been met, correction should not be permitted, notwithstanding the good faith of the parties. See John Amentas Decorators, Inc., B-190691, supra. We are not persuaded that the standard of proof required by the regulations has been met in this case, when we consider the uncertainties regarding profit, overhead and insurance. For that reason, we cannot conclude that the VA had a reasonable basis for determining that there was clear and convincing evidence of CNH's intended bid such as to permit correction.

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 Constr. Co., B-207871, Aug. 31, 1982, 82-2 CPD ¶ 193. Given the disparity in bid prices and the statements and worksheets submitted by CNH, we believe, as stated above, that the record clearly indicates that there was a mistake in CNH's bid, though the evidence is insufficient to support bid correction. Accordingly, we recommend that CNH be permitted to withdraw, but not correct, its bid.

The protest is sustained.



Acting Comptroller General  
of the United States