

DECISION

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

FILE: B-222314

DATE: June 10, 1986

MATTER OF: Utah Construction and Development
Company

DIGEST:

Upward correction of a bid before award is permissible where evidence consisting of the bidder's worksheets, the subcontractor's quotation, and an adding machine tape clearly demonstrates both the existence of a mistake and the intended bid.

Utah Construction and Development Company (Utah) protests the award of a contract to McCullough Construction Company (McCullough) under invitation for bids (IFB) No. R-UT-86-178, issued by the General Services Administration (GSA) for the construction of a senior judge facility at the U.S. Post Office and Courthouse in Salt Lake City, Utah. Utah contends that GSA improperly permitted McCullough to correct a mistake in its bid.

We deny the protest.

The solicitation asked for both a base bid and a bid on an additive line item. It also advised bidders that award would be made to the responsible bidder offering the lowest aggregate price provided money was available to fund all of the work. Thirteen bids were received and opened on January 22, 1986. McCullough was the apparent low bidder with a base bid of \$231,753 and an additive bid of \$5,445, for a total of \$237,198; Utah was second low with a base bid of \$305,000 and an additive bid of \$14,700, for a total of \$319,700.

Because McCullough's base bid was well below the government estimate and other bids received, the contracting officer asked McCullough to verify its price. McCullough responded that in tabulating amounts in the materials column of its worksheet, it had mistakenly

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entered a \$75,000 subcontractor bid as \$7,500. McCullough submitted its worksheets, a copy of the subcontractor's quotation, and the adding machine tape as proof of its error and requested that it be permitted either to correct or to withdraw its bid. The contracting officer concluded that McCullough's worksheets constituted clear and convincing evidence of the error, the manner in which it occurred, and the intended bid. He therefore permitted McCullough to correct its base bid from \$231,753 to \$309,640, resulting in a total bid price of \$315,085.^{1/}

Utah contends that McCullough's evidence as to the existence of a mistake and the amount of the intended bid is not clear and convincing. Finally, Utah alleges that McCullough also erred in quoting on the additive item, but claimed no error so its aggregate price would remain low.

A bidder who seeks to correct an error in a bid before award must submit clear and convincing evidence showing both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR), 4 C.F.R. § 14.406-3 (1984). In cases where a bidder seeks to displace another bidder by showing that it intended to offer a lower price, the existence of the mistake and intended bid must be apparent on the bid itself. Where, however, the bidder seeks upward correction, it may use workpapers to demonstrate the error and intended bid. While correction is more difficult to prove the closer the corrected bid is to the next low bid, the fact that they are close does not automatically preclude correction. Guardian Construction, B-220982, Mar. 6, 1986, 86-1 CPD ¶ 224.

^{1/} McCullough's total estimated material cost was increased from \$201,753 to \$269,253 when the corrected amount of \$75,000 was substituted for \$7,500. The corrected bid price includes profit and overhead at the rates McCullough used in its original bid.

Utah's contention that the correction of McCullough's base bid "displaced" it as low bidder on the base quantity is erroneous. Utah reasons that to the extent McCullough made an error in its base bid, analysis of the intended bid should focus on the base bid alone and correction should not be allowed if it would raise the bid above another vendor's base bid. Displacement as we have used that term means displacement of a low bid by downward correction of another bid that, prior to correction, was not low.

Nor do we agree with Utah's view that correction depends on whether McCullough's base bid is low following correction. Upward correction depends on the rules outlined above. Guardian Construction, B-220982, supra. Upward correction becomes academic if the effect of correction would be to raise a bid so high that another bidder is placed in line for award. This, however, is determined by applying the award criteria established in the solicitation; in this instance, the solicitation provided that award would be based on the lowest aggregate price if funding were available. Since the agency had the necessary funds, it determined the low bid based on the combined prices of the base and additive items.

Moreover, although Utah argues otherwise, the evidence of McCullough's mistake and of its intended bid is clear and convincing. McCullough submitted copies of the quotations which it received from subcontractors for the mechanical portion of the contract work, its worksheets, and an adding machine tape. These documents show that a quotation of \$75,000 was received from one subcontractor and entered correctly on the bidder's worksheet, but that this figure was incorrectly entered into the adding machine as \$7,500. The worksheets also show that after McCullough had totaled its material and labor costs, it added an additional 15 percent to the sum. Thus, although Utah alleges that McCullough increased its bid for material without increasing its profit and other costs (such as surety fees that McCullough treated as overhead costs), the correction does in fact include a \$10,125 allowance for such items.^{2/}

^{2/} 15 percent of the difference between \$75,000 and \$7,500.

Utah further contends that McCullough's evidence is untrustworthy because it was not accompanied by sworn statements. Since the penalties prescribed by 18 U.S.C. § 1001 (1982) can apply to false statements or representations by a bidder, we believe that the adequacy of worksheets as evidence of mistake hinges on whether the worksheets are in good order and indicates the intended bid price not on whether they are in the form of a sworn statement. Pierpoint Inc., B-219855, Oct. 10, 1985, 85-2 CPD ¶ 401. This test is applied notwithstanding the proximity of the corrected and next low bids provided that, as here, it is clear that the intended bid would remain low.^{3/}

Concerning Utah's assertion that McCullough's bid on the additive item was also erroneous, we point out that the bids submitted on this item varied widely, and that while McCullough's bid on this item, at \$5,445, was lower than the next low bid of \$7,000, it was in line with the government's estimate of \$5,599. In the circumstances, the contracting officer acted reasonably in relying on the government's estimate and was under no duty to request

^{3/} We have permitted correction where an intended bid is clearly and convincingly shown to fall below the next low bid even though some doubt existed as to the exact amount of the corrected bid. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369. Similar circumstances exist here. GSA concedes that McCullough rounded its overhead cost downward to the nearest \$1,000 (from \$30,262.95 to \$30,000) in preparing its original bid, but submitted a requested correction based on overhead of \$40,387.95, rather than also rounding that figure down to \$40,000. Consistent with our decision in Vrooman Constructors, correction may be allowed because, using the higher figure, McCullough's bid would still be low by \$4,615.05. We think GSA erred, however, in allowing correction for the full amount requested, without deducting the \$387.95 difference between \$40,387.95 and \$40,000, since it cannot be proved with certainty that the higher figure would have been bid. By separate letter, we are bringing this matter to the attention of the Administrator of General Services.

verification. Bromley Contracting Co., Inc., B-189972, Feb. 8, 1978, 78-1 CPD ¶ 106. Moreover, Utah has submitted no evidence to impeach the government estimate or to otherwise establish its theory that there was any error in this portion of McCullough's bid.

Finally, Utah objects to the fact that a contract was awarded to McCullough following GSA's resolution of Utah's agency-level protest and prior to Utah's filing of its protest with our Office. Utah argues that at the time of award, the contracting officer was aware that it intended to protest to our Office, and that the contracting officer should have considered a protest to be pending and withheld award. A statement of intent to protest is not, however, equivalent to the filing of a protest. The Bendix Corp.-- Reconsideration, B-214142.2, May 15, 1984, 84-1 CPD ¶ 526. There is no legal requirement that a contracting officer withhold award based on his belief that a protest will be filed. Cf. 31 U.S.C. § 3553(c) (Supp. II 1984); Bid Protest Regulations, 4 C.F.R. § 21.4 (1985).

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel