



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Sullivan Enterprises, Inc.

File: B-228051

Date: October 23, 1987

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### DIGEST

Correction of the low bidder's mistake is appropriate where record clearly establishes the claimed mistake and where the alleged intended bid falls within a narrow range of uncertainty, the upper end of which is still significantly below the next low bid.

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### DECISION

Sullivan Enterprises, Inc. protests the decision of the Department of the Air Force to permit Four Seasons Development Co., Inc. to correct a mistake in its low bid under invitation for bids (IFB) No. F41652-87-B0023. The IFB was for replacement of privacy fences in the Dyess Air Force Base military family housing area.

We deny the protest.

The IFB asked for a basic bid and for a total bid including the basic bid and the bids for six additives. Eight bids were received at bid opening on June 17, 1987. Four Seasons was the apparent low bidder with a basic bid of \$453,719 and a total bid of \$901,770. Sullivan's basic bid of \$586,000 and a total bid of \$1,108,100 was next low. The government estimate was \$476,000 for the basic bid and \$941,060.00 for the total bid.

Because Four Seasons' bid was significantly less than the other bids received, the contracting officer asked Four Seasons to verify its price. Four Seasons responded that in calculating its bid it mistakenly entered an item on its recap sheet for \$6,000 instead of \$56,000. Apparently the mistake occurred when the president of Four Seasons relayed costs from local suppliers over the telephone to the firm's estimator at the bid site. The estimator misunderstood the president on the price for galvanizing steel posts and included \$6,000 rather than \$56,000 in his calculations. Four Seasons submitted its worksheets and sworn affidavits from the president and the estimator of Four Seasons regarding the existence of the error. The Air Force

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concluded that Four Seasons had submitted clear and convincing evidence of the error and although the intended bid could not be determined by clear and convincing evidence, it could be determined within a range of uncertainty. The Air Force therefore permitted Four Seasons to increase its bid price to \$1,000,326.30, the low end of that range.

Sullivan contends that Four Seasons' evidence as to the existence of a mistake and the amount of the intended bid is not clear and convincing. Sullivan argues that Four Seasons arbitrarily reduced its initial bid and therefore it is unclear to what extent Four Seasons would have reduced its corrected bid price. Sullivan contends Four Seasons should be required to withdraw its bid because the intended bid price cannot be established.

A mistake in bid alleged prior to award may be corrected where the bidder submits clear and convincing evidence showing existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(a) (1986). Whether the evidence of the mistake and the bid intended meets the clear and convincing standard is a question of fact and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. Praught Construction Corp., B-222420, June 2, 1986, 86-1 CPD ¶ 508.

We agree with the agency that Four Seasons has presented clear and convincing evidence of its mistake. Four Seasons submitted worksheets setting forth a breakdown of the items needed to calculate the basic bid. The item for galvanizing is clearly shown as \$56,000. The recap sheet prepared by the estimator at the bid site shows the cost for galvanizing as \$6,000. However, after totaling the items on the recap sheet and adding 15 percent for overhead and profit and 2 percent for bond, the estimator reduced the total by \$3,944.55 to reach the bid price submitted. Four Seasons explains that it ordinarily reduces its recap worksheet total by an arbitrary amount in anticipation of price breaks from suppliers. Thus it is not clear how much Four Seasons would have reduced its bid price if it had included the \$50,000 extra for galvanizing.

A bidder generally may not obtain correction for even a clearly mistaken bid based on computations or recomputations performed after bid opening to reflect a price that the bidder never intended before bid opening. Roebbelen Eng'g, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, aff'd, Roebbelen Eng'g, Inc.--Reconsideration, B-219929.2, Mar. 31, 1986, 86-1 CPD ¶ 301. The law recognizes that not every mistake is simply a clerical error entailing to failure to transcribe actually intended figures, and that the rule

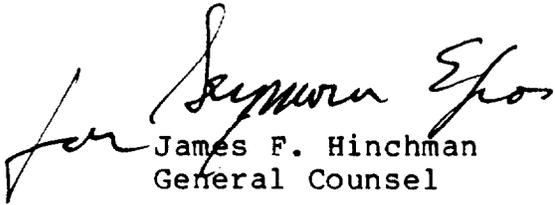
preventing corrections based on computations performed after bid opening should not be applied so rigidly as to preclude corrections of any mistakes aside from transcription errors. Vrooman Constructors, Inc.--Request for Reconsideration, B-218610.2, Mar. 17, 1986, 86-1 CPD ¶ 257. Correction therefore may be allowed even though the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and remain low after correction. Dept. of the Interior--Mistake in Bid Claim, B-222681, July 23, 1986, 86-2 CPD ¶ 98. Correction, however, is limited to increasing the contract price to reflect the bottom of the range of uncertainty. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369.

The sufficiency of the evidence to establish the intended bid depends on the extent of the range of uncertainty and the closeness of the corrected bid to the next low bid. The closer the top of the range of uncertainty is to the next low bid, the more difficult it is to establish an intended bid, and correction may be disallowed where the corrected bid is too close to the next low bid. Id.; Sam Gonzales, Inc., B-216728, Feb. 1, 1985, 85-1 CPD ¶ 125.

In this case, we find that the correction of Four Seasons' bid is consistent with the standard of clear and convincing evidence establishing an intended bid price within a narrow range of uncertainty below the next lowest bid. All the information needed to determine the range is available in Four Season's worksheets. The high end of the range of uncertainty can be calculated by adding the omitted \$50,000 plus 15 percent for overhead and profit and 2 percent for bond to the initial recap total of \$457,663.55 for the basic bid, and then using this amount to recalculate the amounts for the additive items using the bidder's method (which was clearly shown on the recap sheet). This results in a high range of uncertainty for the total bid of \$1,026,164.54. The low end of the range is determined by adding \$50,000 (without any adjustment for overhead, profit and bond) to the amount originally calculated for the basic bid and reducing this amount, \$507,663.55, since Four Seasons had reduced its total for its initial bid price. The Air Force reasonably used the same percentage of reduction (0.862 percent) taken by Four Seasons when preparing its initial bid to calculate the low end of uncertainty as \$503,287.49 for the basic price and \$1,000,326.30 for the total price. Thus Four Seasons' intended bid can be said to fall with a range of uncertainty from \$1,000,326.30 to \$1,026,164.54.

The upper end of the range is approximately 7.4 percent less than the protester's next low bid, an amount significantly less. See Vrooman Constructors, Inc.--Request for Reconsideration, supra. Since the bid may be corrected only to the bottom of the range of uncertainty, correction should be limited to \$1,000,326.30.

The protest is denied.

for  
James F. Hinchman  
General Counsel