



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: McGeary Company
File: B-230713
Date: June 20, 1988

DIGEST

In order to have an error in bid corrected after bid opening, a bidder must submit clear and convincing evidence of the error, the manner in which it occurred and the intended price. Protester that did not substantively respond to agency's reasonable assertion that its mistake claim lacked credibility failed to meet its obligation to submit clear and convincing evidence.

DECISION

McGeary Company protests the decision of the Navy to deny McGeary's request to correct several mistakes in its bid under invitation for bids (IFB) No. N62474-85-B-9154. The IFB is for the replacement of emergency generators at the Marine Corps Base, Camp Pendleton, California.

We deny the protest.

Bidders were to submit one lump-sum bid for all the work required by the IFB. At bid opening on September 4, 1987, the Navy received three bids with McGeary submitting the low bid of \$197,000. Circle Electric Corporation's bid of \$271,657 was the second low bid. The government estimate was \$275,059. In an undated letter, received by the contracting officer on September 14, McGeary requested that its bid be corrected to \$246,168. McGeary stated that it had omitted \$11,220 for subcontractors and suppliers, \$11,678 in subcontractor costs for switchgear, and \$22,500 for a field monitoring system and the additional work required by Amendment 001 to the IFB. McGeary also requested an increase of \$2,270 to reflect its 5 percent markup on the omitted amount for subcontractors and suppliers, and an increase of \$1,475 in its bond premium. McGeary submitted bid worksheets in support of its claim.

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The Navy denied McGeary's request and gave it the option to withdraw or perform at the bid price submitted. McGeary then filed this protest with our Office requesting that it be permitted to correct its bid and be awarded the contract at its intended bid price of \$246,168.

A bidder who seeks upward correction of its bid prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. Federal Acquisition Regulation § 14.406-3(a); Praught Construction Corp., B-222420, June 2, 1986, 86-1 CPD ¶ 508. 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. Southwind Construction Corp., B-228013, Oct. 8, 1987, 87-2 CPD ¶ 346.

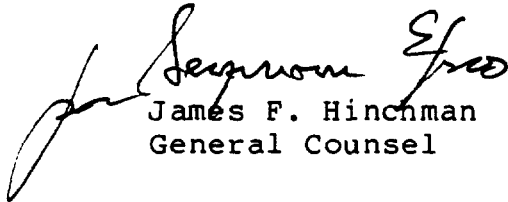
Here, McGeary's bid showed that it had originally written in a price of \$235,000 on its bid sheet, but had then crossed it out, written in \$197,000, dated the change September 4, 1987 and initialed it. The Navy specifically questions this unexplained reduction of McGeary's bid and maintains that the credibility of McGeary's mistake claim is suspect because the correction requested would bring McGeary's bid close to the figure it initially crossed out on its bid sheet. In response, the protester states only that the agency's allegations in this regard are "patently ludicrous."

A bidder who asserts a bid mistake must submit clear and convincing evidence of the existence of the mistake. Inherent in this burden is the obligation of the bidder to establish the genuineness of its purported evidence where the genuineness is called into question. C.T. Lighting, Inc., B-214462, July 24, 1984, 84-2 CPD ¶ 102. In this case, the Navy questions whether the bid submitted by McGeary (\$197,000) was a mistake at all, in view of the fact that a higher amount (\$235,000) had originally been entered on its bid and later changed. In our view, the Navy's position reasonably raises the possibility that before bid opening McGeary intentionally lowered its \$235,000 bid in an amount approximately equal to the amount it now claims to have omitted, and thus that the bid submitted was McGeary's intended bid. Beyond stating that the Navy's position is ludicrous, McGeary has failed to explain the pre-bid opening change in its bid. Moreover, the protester does not in fact explain how any of the claimed mistakes occurred. We note for instance that McGeary's worksheets show that it received firm quotes for two of the allegedly omitted items at 11:40 a.m. and 11:50 a.m. on the day of bid opening, which was scheduled for 2:00 p.m. McGeary does not explain why

firm quotes received more than 2 hours before bids were due were omitted from its bid sheet. Under these circumstances, we find that McGeary has failed to show by clear and convincing evidence that its bid was based on the erroneous omission of several items rather than the intentional reduction of the amount originally entered on its bid. Accordingly, the Navy properly decided that correction should not be permitted.

In contrast with the clear and convincing evidence required for bid correction, withdrawal of a bid requires a lesser degree of proof. We agree with the Navy that withdrawal of McGeary's bid is appropriate given McGeary's claim of mistake and the difference between McGeary's bid and either the government estimate or the next low bid. See C.T. Lighting, Inc., B-214462, supra.

The protest is denied.



James F. Hinchman
General Counsel