



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Block Company

File: B-235053

Date: July 31, 1989

DIGEST

Bidder seeking post-bid-opening correction of a claimed mistake in bid must submit clear and convincing evidence of the error and how it occurred. Protester that did not substantively respond to agency's reasonable assertion that its mistake claim lacked credibility did not meet its obligation to submit clear and convincing evidence.

DECISION

American Block Company protests the Department of the Navy's denial of its request to correct an alleged mistake in its bid submitted in response to invitation for bids (IFB) No. N68335-89-B-0051. We deny the protest.

The IFB requested bids for 10 air flask assemblies for aircraft carrier catapult systems. Nine firms submitted bids. The three lowest bids were received from: ARC Machine, Inc., \$27,000; American Block, \$236,530; and Spokane Metal Products, \$326,250. The government estimate was \$350,000. The Navy allowed withdrawal of ARC's low bid after the bidder claimed a mistake.

Due to the disparity between American Block's bid and both the government estimate and the other bids, the contracting officer asked American Block to verify its price. American Block claimed a mistake and requested permission to correct its bid to \$317,840. The request for correction included the protester's original and corrected worksheets. The Navy denied American Block's request because it could not determine from the protester's submission either how the mistake occurred, or the intended bid. The agency gave American Block the option to withdraw or perform at the bid price submitted. American Block then filed this protest with our Office requesting permission to correct its bid to \$317,840.

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The IFB in part required bidders to furnish two hemispherical heads for each air flask assembly. According to the protester, its supplier, Gulf Railcar, Inc., furnished a quotation for the wrong type of head--a lower cost elliptical head (costing \$2,640 each) instead of the more expensive hemispherical head (costing \$5,800 each) the IFB required. American Block sought to correct the mistake by increasing its bid price from \$23,653 to \$31,784 per unit.

The agency found that the protester's documents did not support the protester's contention that its supplier quoted the wrong item; rather, the documents showed that the protester itself asked for a quotation on the wrong item, an elliptical rather than hemispherical head. Moreover, the Navy could not determine the protester's intended bid because of certain unexplained differences between the original worksheet and the corrected worksheet--the corrected worksheet did not include pricing for Charpy testing^{1/} (originally \$50 per head), freight (originally \$30), and contingencies (originally \$150). The corrected worksheet's total was also in error, reading \$16,540 instead of the actual total of \$16,360.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred, and the intended price. Federal Acquisition Regulation § 14.406-3(a); McGeary Co., B-230713, June 20, 1988, 88-1 CPD ¶ 586. The closer an intended bid is to the next low bid, the more difficult it is to establish that it is the bid actually intended and the higher the standard of proof used in scrutinizing the evidence submitted; for these reasons, correction is often disallowed when a corrected bid would come too close to the next low bid. See Northwest Builders, B-228555, Feb. 26, 1988, 88-1 CPD ¶ 200. 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, American Block has not shown that the Navy's decision lacks a reasonable basis. There is no question that American Block's bid contained a mistake since American Block based its bid price on using the wrong head. However, it is not clear how the mistake occurred. American Block contends that it sought a supplier quotation for the

^{1/} Charpy testing measures the breaking strength of materials under impact.

required head, but because of its supplier's error, received a quotation for the wrong type of head. American Block's worksheets, however, contain no evidence supportive of American Block's explanation of how the mistake occurred; rather, the worksheets only describe the item as a "HEAD", without specifying the type ordered. In contrast, its supplier's revised quotation states, ". . . our records indicate you requested pricing on the elliptical head not a hemispherical head." American Block has not explained its supplier's documented assertion that American Block's initial statement of how the claimed mistake occurred was incorrect. Moreover, American Block has not stated whether its supplier's quotation was based on American Block's written or oral request for quotation. Obviously, if American Block's request was in writing, the writing would clearly establish how the mistake occurred because it would show what American Block asked its supplier to quote. If the request for quotation was oral, American Block has not explained its failure to provide its supplier's written confirmation of its January 10, 1989, oral quotation for the Navy's consideration. In this regard, we note that the record contains the supplier's written confirmation, dated February 23, 1989, of its February 20, oral quotation for hemispherical heads. Under these circumstances, we find that American Block has not shown how the mistake occurred.

Further, the bid actually intended is not clear from American Block's work papers because of the unexplained differences between the original worksheet and the corrected worksheet noted above. For example, the first line of the original worksheet reads in part: "HEAD 61 1/2 ID, 3" Nom, \$50 CHARPY . . . 5,380." The original worksheet also has a separate column titled "RECAPITULATION" which contains a line item for "CHARPY, IMPACT: 0." In comparison, the first line of the corrected work sheet reads in part: "HEAD 61 1/2 ID, 2 1/4 Nom, 17/8 Min HEMISPHERICAL . . . 11600." The corrected worksheet's RECAPITULATION column contains the line item "CHARPY, IMPACT."

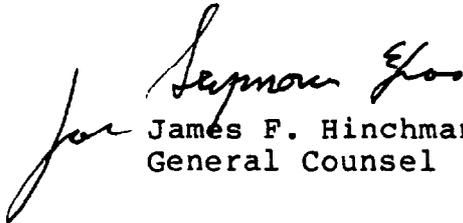
The Navy reports that it could not determine from the above exactly what American Block intended with regard to the charpy testing. The protester states that charpy testing was part of the work included in its supplier's quotation, and that it did not break out charpy testing on its corrected worksheet because its supplier did not break out charpy testing on its revised quotation. Even if this is true, it does not establish American Block's intended bid since, as the agency notes, the omission could have resulted from a transcription error, a mathematical error, or an intentional deletion of the items. In addition, the unexplained omission from the corrected worksheet of the

amounts for freight and contingencies shown on the original worksheet, and the discrepancy between the total of the individual items and the total price shown on the corrected worksheet, add to the uncertainty regarding American block's intended bid. Consequently, we find the Navy's determination that American Block failed to establish its intended bid reasonable. See Northwest Builders, B-228555, supra.

Considering the foregoing, and given that the correction requested would bring American Block's bid (\$317,840) within 2.6 percent (\$8,410) of the bid of the next low bidder (\$326,250), we find that the Navy properly refused correction of American Block's bid.

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 American Block's bid is appropriate given American Block's claim of mistake and the difference between its bid and either the government estimate or the next low bid. See C.T. Lighting, Inc., B-214462, July 24, 1984, 84-2 CPD ¶ 102.

The protest is denied.

 James F. Hinchman
General Counsel