



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Imprints From the Past

**File:** B-240447

**Date:** November 21, 1990

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David S. Brose for the protester.

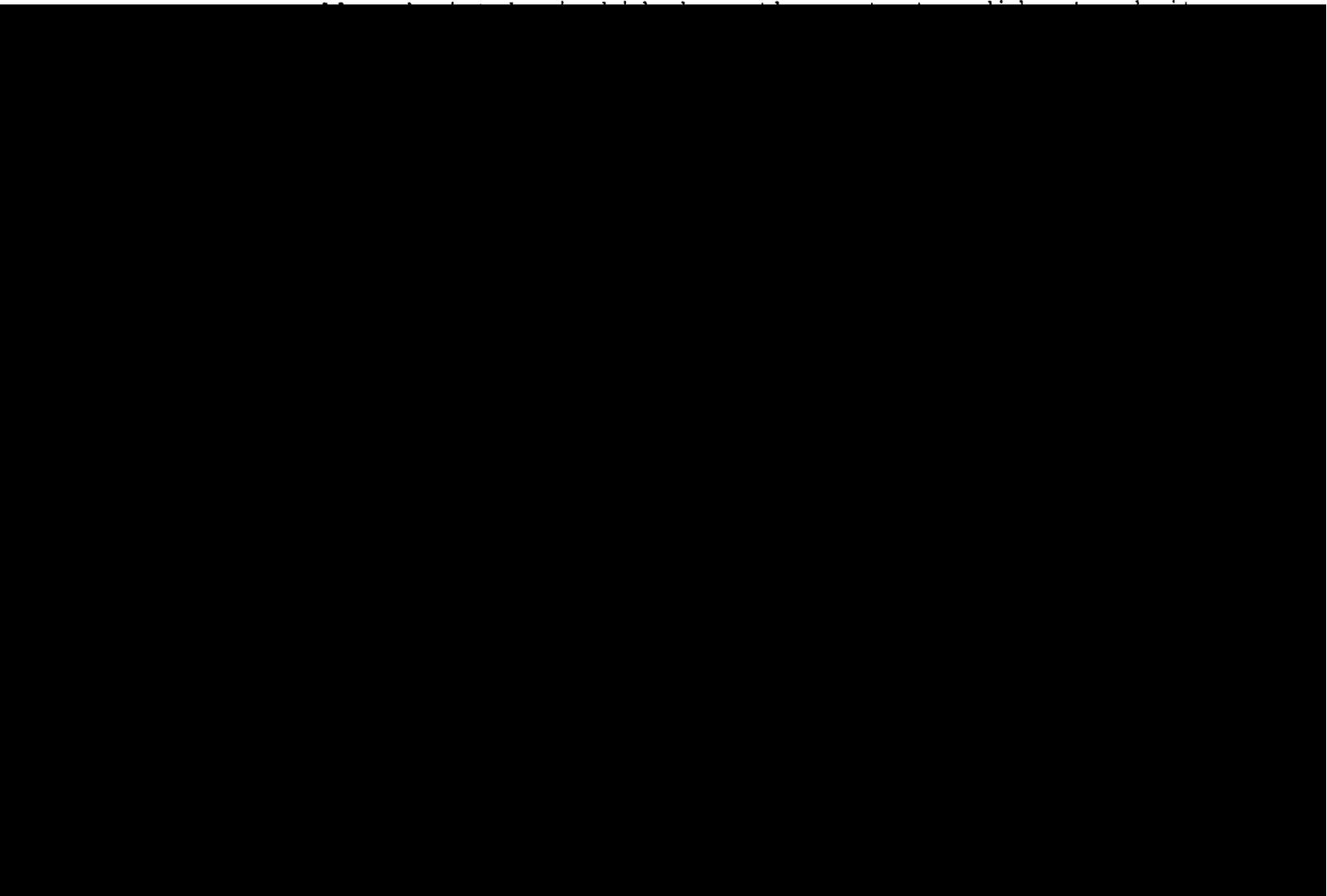
J. R. Holcombe, Jr., Department of Agriculture, for the agency.

Jacqueline Maeder, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency properly refused to permit protester to correct an



After reviewing this information, SCS determined that Imprints had not submitted clear and convincing evidence of its mistake, the manner in which it occurred and the intended bid amount. SCS denied the request for correction but concluded that since there was sufficient evidence that a mistake had been made, it would be proper to allow Imprints to withdraw its bid. SCS subsequently awarded the contract to Archaeological Services Consultants and this protest followed.

Imprints explains by way of background that it had prepared an earlier report for SCS in which it recommended work that was needed for data recovery. According to the protester, it was requested to estimate the cost to perform this work and it verbally communicated an estimate of \$83,625 to an agency representative in January 1989. The protester submitted a worksheet from which it developed this figure. The worksheet shows estimated costs of \$34,500 at one site and \$48,125 at the second site.<sup>1/</sup> The government representative has no recollection of being provided with this estimate.

According to the protester, when it received the IFB for archaeological data recovery from these sites, it recognized that while the scope of work involved the same levels of machine-assisted excavation which Imprints had recommended in its evaluation report, the IFB required substantially greater levels of manual excavation. Based on this increased level of work, the protester estimated its direct costs for field crew salaries (including machine work), expendable supplies, and the use of permanent surveying, flotation and photographic equipment needed at \$47,650. To this, Imprints added \$3,750 for 15 weeks of van rental for an estimate of \$51,400 for the direct costs of field work. Laboratory work was calculated at \$600 per day for 40 days for a total of \$48,000 and unspecified outside costs of \$6,500 were also added. Transportation costs of \$7,300 were added to the figures given above, resulting in direct costs of \$113,200. Imprints next calculated its indirect costs at \$41,480, based on overhead rates for laboratory research at the Cleveland Museum of National History and profit rates for field work. Although Imprints explains that the total direct and indirect costs were \$154,680, this amount does not appear on the worksheets. Rather a total of \$147,380, which is crossed out, is shown.

Imprints explains that because this was a competitive procurement, it then pared down its indirect costs by applying the overhead rates only for those portions of laboratory analysis and curation that had to be performed in a museum,

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<sup>1/</sup> The figures \$34,500 and \$48,125 equal a total of \$82,625. Apparently, the protester made a \$1,000 addition error when calculating its original estimate.

arriving at a total indirect cost of \$20,465. These costs added to the \$113,200 total for direct costs equal the \$133,625 which also appears on the worksheets, and which Imprints alleges it intended to bid.

Although Imprints states that it believed it had submitted this \$133,625 figure as its lump sum bid, the agency received only a bid of \$83,625 from Imprints. Imprints says that it does not know how the \$83,625 figure was submitted, but surmises that the figure "was either incorrectly transcribed from the worksheets, or was mistakenly copied from the original, pre-scope of work, estimate" and inadvertently submitted. The protester states that the same person who calculated the costs on the worksheets prepared the bid.

An agency may permit upward correction of a low bid before award to an amount that still is less than the next low bid, where there is clear and convincing evidence establishing both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3; States Roofing & Metal Co., Inc., B-237900, Apr. 3, 1990, 90-1 CPD ¶ 353. 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. DeRalco, Inc., B-228721, Oct. 7, 1987, 87-2 CPD ¶ 343. In this respect, in considering upward correction of a low bid, 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. BAL/BOA Servs., Inc., B-233157, Feb. 9, 1989, 89-1 CPD ¶ 138.

Our examination of Imprints' worksheets and the explanation furnished by the firm leads us to conclude that SCS had a reasonable basis to permit withdrawal of the bid but not to permit correction. The bidder submitted a lump sum bid of \$83,625 and two sets of undated worksheets; one set totaling \$82,625 was apparently based on the protester's estimate of the work required before the issuance of the IFB. The revised set, allegedly developed on receipt of the IFB, contains various possible totals, but read in conjunction with Imprints' explanation can be understood to total \$133,625.

As the agency notes, Imprints worksheets are undated and unclear, and require elaborate clarification to support the price of \$133,625 advanced by the protester. In our view, considering the protester's uncertainty as to how the mistake was made and the lack of clarity within the protester's worksheets regarding what price was calculated, the protester has not presented clear and convincing evidence of any intended bid. Accordingly, the agency had a reasonable basis

to deny Imprints' request for correction. See L.F. Leiker  
Constr. Co., Inc., B-238496, May 4, 1990, 90-1 CPD ¶ 453.

The protest is denied.



f James F. Hinchman  
General Counsel