



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Severino Trucking Co., Inc.

**File:** B-259080.2

**Date:** March 23, 1995

Alvin S. Nathanson, Esq., Nathanson & Goldberg, for the protester.

Amy L. Corbett, Esq., and Katherine A. Sarris, Esq., Federal Aviation Administration, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly allowed correction of mistake in apparent low bid where the record clearly shows the existence of the mistake and of the intended bid, and the corrected bid remains below the next low bid.

### DECISION

Severino Trucking Co., Inc. protests the award of a contract to North American Construction Corporation (NACC) under invitation for bids (IFB) No. DTFA12-94-B-00885, issued by the Federal Aviation Administration (FAA) for power systems modifications at the Boston Air Route Traffic Control Center in Nashua, New Hampshire. Severino contends that the FAA improperly permitted NACC to correct a mistake in its apparent low bid.

We deny the protest.

On May 18, 1994, the agency issued the solicitation for award of a firm, fixed-price contract for construction of a new power service building and final rehabilitation of the battery room and uninterruptible power systems. Bidders were to submit lump-sum bids for phase I, construction of the new building, and after allowing a turnkey contractor 1 year to install the core of the power system modification, the agency would have an option to award a phase II contract, for the final rehabilitation work. The solicitation provided for award based on the phase I price alone.

On September 9, the agency received three bids, as follows:

<u>Bidder</u>	<u>Phase I</u>	<u>Phase II</u>	<u>Total</u>
NACC	\$2,499,000	\$190,000	\$2,689,000
Severino	3,541,688	235,175	3,766,863
Con-Rel, Inc.	4,053,790	180,000	4,233,790

NACC initially submitted a bid of \$3 million for phase I and \$1.8 million for phase II, but then submitted a timely modification reducing its price for the two phases by \$501,000 and \$1,610,000, respectively. Because of the disparity between NACC's low bid of \$2,499,000 and the next low bid of \$3,541,000, from Severino, as well as the government estimate of \$3 million for phase I, the contracting officer requested that NACC verify its price.

On September 14, NACC informed the contracting officer by telephone that its bid contained a mistake. In its letter to the agency dated September 19, NACC explained that in adding up the bid, it had omitted the third of three spread sheets used to calculate its costs; instead of its actual cost estimate of \$2,734,000 for phase I, NACC had used a figure of \$1,970,000, which represented the cost from only the first two spread sheets. NACC requested an upward correction to its phase I bid of \$918,000, to \$3,417,000.<sup>1</sup> Based on the information NACC provided to the agency and the firm's explanation of how the mistake occurred, the FAA concluded that NACC had provided clear and convincing evidence of the mistake and of its intended bid, and allowed the firm to correct its bid. On October 7, the agency awarded the contract to NACC at the corrected price of \$3,417,000. This protest followed.

An agency may allow upward correction of a low bid before award if there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.406-3. Whether the evidence meets the clear and convincing standard is a question of fact, and our Office will not question an agency's decision based on this evidence unless it lacks a reasonable basis. States Roofing & Metal Co., Inc., B-237900, Apr. 3, 1990, 90-1 CPD ¶ 353. Workpapers, including records of computer generated software spread sheets (hard copy printouts, disks, or other software media), may constitute clear and convincing evidence if they

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<sup>1</sup>This \$918,000 figure represented \$764,000 in costs omitted from the bid, plus 25 percent in profit and overhead, or \$955,000 total, less \$37,000 applied to the mistaken bid as a "rounding" factor.

are in good order and indicate the intended bid price, and there is no contravening evidence. C Constr. Co., Inc., B-253198.2 Sept. 30, 1993, 93-2 CPD ¶ 198. Based on our review of the record, we find no basis to question the FAA's decision to allow the correction.

We have reviewed NACC's spread sheets; they appear to be in good order and support NACC's explanation that it simply failed to add the costs appearing on the third spread sheet. The two spread sheets, which show a cost of \$1,970,000, when compared to NACC's bid of \$2,499,000 for phase I, support NACC's certification that its bid was calculated by applying the 25-percent profit and overhead factor to the costs appearing on the spread sheet. The application of the 25-percent factor applied to the omitted \$764,000 in costs from the third spread sheet yields the \$955,000 claimed as the mistake. The initial, mistaken bid did contain a rounding factor of \$36,500, increasing the bid from \$2,462,500 (\$1,970,000 plus 25 percent) to \$2,499,000, but NACC did not claim any amount for rounding up in its correction request. Any uncertainty arising from the rounding up would not, in any event, prevent correction, since the amount involved would be relatively small compared with the \$120,000 difference in bids. George C. Martin, Inc., B-187638, Jan. 19, 1977, 77-1 CPD ¶ 39.

The protester argues that NACC has failed to submit the clear and convincing evidence of mistake and its intended bid that FAR § 14.406-3 requires. Severino asserts that NACC has failed to explain how the error occurred; that it submitted spread sheets, rather than the worksheets requested by the agency and required by the FAR; and that the certification by NACC's president is invalid since it did not comply with the requirements of 28 U.S.C. § 1746 (1988), which requires an attestation under penalty of perjury. These arguments by Severino's counsel are without merit.

NACC's letter requesting correction of the mistake advised the agency of the disparity between its mistaken bid and its corrected bid and explained that the disparity is the amount shown on the third spread sheet; the letter went on to state, however, that the error was caused "by an incorrect formula in the spreadsheet." Severino's counsel apparently interprets this letter as implying that there is some other mistake, involving the application of some formula that does not appear on the spread sheets, involved in NACC's bid calculations. The record shows nothing so complicated; NACC's president explains that the formula entered into the spread sheets simply omitted the costs from the third spread sheet. The nature and effect of the error and its role in generating the mistaken bid are clear; we have no basis for

concluding that the FAA was unreasonable in not requiring further explanation concerning the source of error.

Regarding the use of spread sheets, the agency argues that its request for "worksheets" was not restrictive, and that the protester's preference for other means of bid preparation is simply irrelevant to the issue of whether the evidence is clear enough and convincing enough to warrant correction.<sup>2</sup> We agree; FAR § 14.406-3(g)(2) does not require any particular evidence to support bid correction; it merely states that the request for correction must be supported by evidence "such as" worksheets. See also C Constr. Co., Inc., supra. There is no basis here for considering NACC's spread sheets any less reliable than written worksheets, or more susceptible to tampering; while Severino terms NACC's costs "suspect," the protester presents no basis or contravening evidence that bring into question the agency's decision to accept the evidence of the spread sheets in making its determination.

As a cover sheet to the spread sheets submitted with its correction request, NACC supplied a "Certification of Fact," to which the firm's president attested as follows: -

"I hereby certify that to the best of my knowledge, the information provided in this document is true and correct."

Initially, there is no need for a sworn statement subject to 28 U.S.C. § 1746, since as we have often pointed out, the penalties prescribed by 18 U.S.C § 1001 (1988) would apply in any event; these penalties are a sufficient guarantee against false statements or representations by a bidder. Schoutten Constr. Co., B-215663, Sept. 18, 1984, 84-2 CPD ¶ 318. To the extent that the protester argues that the reference to "this document" is inexact and may mean only the cover page itself, the record as a whole supports the agency's interpretation and acceptance of the certification as establishing the accuracy of the spread sheet printouts as evidence of NACC's mistake and intended bid.

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<sup>2</sup>The protester uses the wrong standard for correction in this case, citing Peck Iron and Metal Co., Inc., 69 Comp. Gen. 534 (1990), 90-1 CPD ¶ 563. That case involved the displacement of the high bidder on sale of surplus scrap; where correction would result in displacing the successful bidder, FAR § 14.406-3(a) allows correction only where the existence of the mistake and the bid actually intended are "ascertainable substantially from the invitation and the bid itself." This standard does not apply where, as here, the low bidder requests correction to an amount less than the second low bid.

As noted above, where, as here, the agency considers the evidence to meet the clear and convincing standard required by FAR § 14.406-3, our Office will not question that determination unless it lacks a reasonable basis. States Roofing & Metal Co., Inc., supra. The record contains nothing to show that the agency's determination here was unreasonable. On the contrary, NACC's president has certified the correctness of the documentation submitted. This documentation shows clearly how NACC calculated its price and how the mistake occurred. Moreover, NACC's intended bid can be readily calculated from the spread sheets NACC submitted to the FAA. Accordingly, based on our review of the record, we find that it was reasonable for the agency to conclude that NACC had submitted clear and convincing evidence of the mistake and of its intended bid.

The protest is denied.

\s\ Michael R. Golden  
for Robert P. Murphy  
General Counsel