

01498

James Peaco  
Proc. I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-187671**

**DATE: January 31, 1977**

**MATTER OF: Government Contractors, Inc.**

**DIGEST:**

1. Where solicitation requires bids based on providing minimum number of manhours, protest against manhour minimum filed after bid opening is untimely under Bid Protest Procedures (4 C.F.R. § 20 (1976)) and therefore will not be considered on merits.
2. Where worksheet submitted in support of request for bid correction shows mathematical error in addition and bidder provides satisfactory explanation of only apparent discrepancy therein, contracting officer's denial of correction on basis of lack of clear and convincing evidence of intended bid price is not reasonable.
3. Determination concerning bidder's responsibility as prospective contractor should be made pursuant to applicable regulations since worksheet submitted to support bid correction shows bidder does not intend to comply with minimum manning requirement.

Government Contractors, Inc. (GCI), protests the denial of its request for bid correction and the rejecting of its bid under invitation for bids (IFB) No. N62470-76-B-0181, issued by the Naval Facilities Engineering Command.

The solicitation requested bids for janitorial services to be performed at the Sewells Point Area, Norfolk, Virginia. Bidders were advised by amendment No. 1 to the IFB of the incorporation of a new paragraph (1B.1.1) entitled Minimum performance requirements, which stated that:

"Based upon the application of local standards the Government has determined that a minimum of 169,000 manhours are necessary to properly perform all the services required under the terms of this contract over a twelve month period. Therefore, the

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Contractor will be required to provide at least this number of direct labor manhours, supplemented by adequate supervision to insure that the manhours, are effectively employed toward contract performance. This figure shall not include holidays, leave time or supervision. This number of manhours is strictly a minimum and it shall be the Contractor's responsibility to study the job requirements in detail; \* \* \* However, in no case will the provision of less than the minimum number of manhours be acceptable to the Government."

Fifteen bids were received and opened on September 3, 1976. The five lowest bidders were:

GCI	\$612,000
National Storage Systems, Inc.	721,000
Best-Way, Inc.	729,890
Kentucky Building Maintenance, Inc.	743,000
E.C. Professional Services	751,680

Since the Government estimate for the work was \$923,000, the contracting officer requested that GCI verify its low bid. On September 7, 1976, the third low bidder, Best-Way, Inc., protested that GCI was a nonresponsible bidder because it would be unable to comply with the minimum wage provisions of the Service Contract Act if award was made at its bid price. The second low bidder requested that its bid be disregarded because it could not comply with the 169,000 minimum man-hour requirement in the IFB.

On September 10, 1976, GCI alleged that it had made an error in its intended bid. GCI submitted its worksheet to show that it had incorrectly added the separate cost items by the sum of \$100,000. After reviewing the worksheet the contracting officer concluded that while there appeared to be an error in computation, the worksheet did not establish the amount for which correction was requested. It was also noted that the worksheets showed GCI computed its bid on the basis of providing 41,700 day direct labor hours and 100,000 night direct labor hours for a total of 141,700 labor hours. Thus, it

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was determined that GCI's evidence of a mathematical error in its intended bid proved that its bid was not calculated to provide performance in accordance with the 169,000 manhour minimum required under the invitation. If awarded the contract at its requested corrected price of \$712,000, the contracting officer concluded that GCI would incur a grave financial loss in view of the minimum costs incident to performing on the basis of 169,000 manhours. However, if GCI's performance was intended to be based upon supplying fewer manhours than required, as shown by its worksheets, then it appeared that GCI was either a nonresponsive and/or nonresponsible bidder. In view thereof, pursuant to the provisions of Armed Services Procurement Regulation (ASPR) § 2-406.3(a)(3) (1975 ed.), the contracting officer concluded that the evidence was not clear and convincing as to GCI's intended bid. Therefore, the contracting officer made a determination that GCI's bid could be withdrawn but the requested bid correction could not be allowed.

GCI acknowledged receipt of amendment No. 1 to the IFB and did not take exception to the 169,000 manhour minimum requirement for performance. However, in requesting bid correction, GCI protested after bid opening that the 169,000 manhour requirement is unrealistic and did not reflect the actual manning required to satisfactorily perform the contract.

With respect to GCI's protest against the IFB's minimum manning requirement, section 20.2(b)(1) of our Bid Protest Regulations, 4 C.F.R. § 20 (1976), provides that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening shall be filed prior to that time. Because GCI acknowledged receipt of amendment No. 1 incorporating the minimum manning requirement and knew of the basis for its protest prior to the September 3, 1976, bid opening, its protest on this issue is untimely and will not be considered on the merits.

To permit correction of an error in bid alleged prior to award, our Office has consistently held that a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. See 53 Comp. Gen. 232 (1973). These are the same basic requirements for correction of a bid that are prescribed by ASPR § 2-406.3(a)(2), *supra*. As we stated in 53 Comp. Gen. *supra*, at 235, even though our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively

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designated evaluator of evidence (in this instance, the contracting officer) whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision.

As noted above, GCI submitted its worksheet to establish an error of \$100,000 in adding the cost figures used in computing its bid and requested that its bid of \$612,000 be increased to \$712,000. The contracting officer concluded that there was not clear and convincing evidence as to the intended bid price because "to arrive at the intended bid price of \$712,000, one has to assume the amount of \$2,400 was intended [for mop rental] and a mechanical error in addition was made," whereas the original worksheet indicates a dollar amount of \$3,400 for mop rental. Therefore, it was concluded that this "fact clouds the veracity of the alleged error in the sum of \$100,000."

In this connection, the Navy notes that the adding machine tape submitted with the worksheet included a figure of \$2,400 for mop rental, contrary to the figure on the worksheet. However, the contracting officer's conclusion ignores GCI's explanation of this apparent discrepancy. GCI explained that the \$2,400 figure included in the worksheet was made to look like \$3,400 by reason of the comma touching the tail of the two. We have carefully examined the worksheet and believe this explanation to be satisfactory. Therefore, we have a problem in concluding that the contracting officer's decision denying correction was reasonable.

In any event, as noted above, the worksheet also shows that GCI has no intention of complying with the minimum manning requirement as its bid price was calculated on the basis of 141,700 man-hours rather than the 169,000 required. Therefore, we believe there is doubt whether GCI meets the requirements of a responsible prospective contractor as set forth in ASPR § 1-900 (1976 ed.) et seq., and recommend that the appropriate determination thereunder be made.

Accordingly, it is our view that the requested correction should be permitted unless there is a negative responsibility determination.

Deputy

*[Handwritten Signature]*  
Comptroller General  
of the United States