

6813

*Wm. Harpeth, P.I.*

**DECISION**



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

**FILE:** B-191658

**DATE:** June 23, 1978

**MATTER OF:** AAA Engineering & Drafting, Inc.

**DIGEST:**

1. Contention that intended bid price of low bidder claiming mistake is uncertain since worksheets show no provision for costs other than labor is of no merit where costs bid vis-a-vis minimum labor rates applicable to procurement tend to indicate truth of low bidder's statement that prices bid were factored to include all costs including overhead and profit
2. Contention that low bidder claiming mistake should have computed costs on basis of greater number of photos and related matter concerning whether bidder took into account total areas of performance goes to business judgment of bidder and involves calculation of bid price, not proper basis for correction or withdrawal of bid. Moreover, invitation gave no number in this regard.
3. Where uncertainty of intended bid price is within relatively narrow range and is merely small percentage of difference between second low bid and corrected low bid, uncertainty is too negligible to require withdrawal of bid, and award may be made on low bid as corrected.

AAA Engineering & Drafting, Inc. (AAA), protests award to any firm other than itself under United States Forest Service (Shasta-Trinity National Forest) invitation for bids (IFB) No. R5-14-78-10 for timber-type delineation, stand classification, and transfer mapping at two designated areas. The IFB, as amended, set forth specific sections of the two areas to be covered by contract performance called quadrangles comprised of up to four sheets--47 sheets for one area and 12 for the other. Originally the IFB stipulated 46 and 13 sheets.

The AAA bid of \$55,460 was the lowest of the five bids received. The next low bid was for \$75,815. The Government estimated cost for the work was \$73,000.

Because the AAA bid price was approximately 27 percent lower than the next low price bid and approximately 24 percent below the Government cost estimate, AAA was requested by the contracting officer to verify its price. AAA replied by stating that it had made a mistake in its bid price computation and by requesting correction of its price by \$8,401 to a total of \$63,861. The alleged bid price computation sheets for this procurement, as well as one for a prior-cancelled procurement, were submitted to the contracting officer as proof of the error. Apparently, some of the figures used in the AAA bid computation were first computed by an AAA employee and then transmitted to the president of AAA for the final price computation. Among these were the number of full quads (sheets) for each of the two items of work (43 and 12.61 on the employee's computation sheet; 46 and 13 on the president's computation sheet), the number for the amount of square feet per full quad (2.63 on employee's computation sheet), and the number of square feet of work at the mapping scale or number of full quads times number of square feet per full quad (113.09 and 33.138 on the employee's computation sheet; 42 and 12.3 on president's computation sheet). In computing the AAA bid price, the president of AAA allegedly used the figures for the number of full quads as a multiplier on several subitem computations rather than using the number of square feet of work at the mapping scale as the multiplier as should have been done. AAA emphasized that, because of different calculation assumptions and methods, some small differences in calculations existed. AAA further stated that while it believed correction should be permitted, an award at the original bid price would be accepted if correction was impossible.

The contracting officer recommended that correction be permitted and that a contract of \$63,861 be awarded AAA. The Office of the General Counsel, Department of Agriculture, believes that rather than allowing correction AAA should be permitted to withdraw its bid.

The Office of the General Counsel notes that it is required in section 1-2.406-3(a)(3) of the Federal Procurement Regulations (1964 ed. circ. 1) that clear and convincing evidence must exist to establish both the existence of the mistake and the bid price that was actually intended. It believes that the high standard of proof necessary before correction may be permitted cannot be met in this case.

First, it is noted by the Office of the General Counsel that while the specification requires the contractor to furnish things other than labor, the AAA worksheets appear to include only labor costs. No provision for profits and overhead appear to have been included in the computations either, thus adding an uncertainty to the actually intended bid price. Second, the computations of AAA are based upon 828 photos, whereas, although no exact number was mentioned in the invitation, the true number is closer to 1,000, and an increase of 172 photos would add a cost of \$6,878.28 to the AAA price. AAA stated, apparently, that its figure was based upon an assumption of the best conditions existing and that an error was not being claimed as to this matter. Third, uncertainty as to the intended bid price is contained, it is argued, in the fact that the original calculations of the full quads to square footage show the figures of 43 and 12.61 for item Nos. 1 and 2 instead of the figures of 42 and 12.3, respectively, actually used in computing the bid price. Further, for all of these reasons, and citing the requirements that must be met before allowing an award without correction in 52 Comp. Gen. 706 (1973), it is believed that an award without correction may not be allowed since it cannot be ascertained that the AAA bid would have still been low had AAA submitted the bid price it actually intended.

We believe that the correction requested by AAA may be permitted and that an award to that firm on the basis of the corrected amount may be made.

As regards the first reason put forth for requiring withdrawal of the bid, AAA advises that the "labor costs" used are weighted labor costs (labor costs converted by an experienced cost factor) which include all the support costs of the direct labor as well as

overhead and profit. This method of estimating performance costs for any given contract has apparently been accepted by the Defense Contract Audit Agency for use in pricing negotiated cost reimbursement procurements. It should be noted that the "labor costs" in the AAA worksheets range from \$13.33 to \$9.00. The minimum hourly rates in the Wage Determination for this procurement ranged from \$7.02 to \$3.61. From this it is reasonable to conclude that more than direct labor costs are in the AAA bid computation figures.

Second, AAA did not allege any error as to the number of photos used in its computation. Instead its position is that the importance given to the number of photos is a matter of judgment and that "the number of photos available for use in the contract is actually of no material effect, since the contract is dealing with ultimate mapped areas of terrain." In any event, this matter would appear to involve the calculation (the business judgment factor) of the final price and as such is not something that would permit either a correction of the bid price or a withdrawal of the bid had AAA requested either for this reason. 51 Comp. Gen. 18 (1971). Moreover, we note that the invitation did not specify a required number of photos.

Third, as regards the matter of the slight variation in numbers shown in the worksheets, both 42 and 43 are shown on the employee's computation sheet although 43 is used there to calculate the 113 figure whereas 42 was used in the final bid price calculation of the president. The numbers 12.61 and 12.3 mentioned above also are at variance. While it is the position of the Office of the General Counsel that since the numbers used vary on the two computation sheets the exact price that AAA would have bid if it had done so correctly in the first instance is uncertain, our Office has recognized that an uncertainty within a relatively narrow range is not inconsistent with the requirement for clear and convincing evidence of what the bid would have been. Fortec Constructors, B-189949, November 15, 1977, 77-2 CPD 372.

Assuming that AAA had made its original calculations using the figures of 42 and 12.3 instead of 43 and 12.61, the resulting figures would have been 111.46 and 32.349 instead of the respective 113 and 33 (both

rounded off). Were the former numbers rounded off also to 111 and 32, the AAA mistake in bid would total \$8,098, or \$303 less than the \$8,401 figure claimed. Thus the uncertainty is a total of \$303. The difference between the corrected AAA bid of \$63,558 (\$55,460 plus \$8,098) and the second low bid is \$12,257. Thus, the uncertain sum of \$303 is approximately only 2.5 percent of that difference. Similar computations taking into account the number of quads in the IFB (47 and 12) would result in a slight decrease of the corrected amount requested. We believe these differences are so small as to be negligible and that award to AAA on the basis of its corrected bid would thus be permissible. Also, the contracting officer has recommended an award at the figure of \$63,861, presumably having determined that had AAA originally computed its price correctly it would have used the figures of 113 and 33 (rounded off). We have no basis for finding that conclusion to be unreasonable. George C. Martin, Inc., B-187638, January 19, 1977, 77-1 CPD 39.

An interested party to this procurement presents a basically threefold argument against correction and/or award to AAA. First, it is noted that in the AAA letter to the contracting officer in which AAA alleged and explained its mistake and to which AAA attached its worksheets (we were requested not to release the latter to third parties), AAA calculated for item Nos. 1 and 2 a total of 55.5 (43 and 12.5) quads with a resulting total of 146 (113 and 33) square feet of work at the mapping scale. However, it is noted that AAA used a figure of 54.3 quads as square feet (a figure contained in the findings of the contracting officer) in the president's computations along with the 146 figure. Had AAA used the properly computed square footage for the 54.3 quads, this party contends the figure 142.8 instead of 146 should have been used. Thus, since it is not clear which of the 3 possible sets of figures (146:55.5; 142.8:54.3; 146:54.3) would have been used, it is argued that the computation of the intended AAA price is impossible. Any computation would result in three prices, the difference between the extremes of these being \$393.16. Further, in this view, it is felt that mistaking even the 54.3-quad figure (especially having rounded 55.5 down to reach that figure)

as standing for the square-foot figure allegedly intended for use constitutes a mental lapse that is hardly credible.

Second, noting that not one sheet, but rather four sheets, should represent a quad, the party contends that AAA erred in attributing a size of 18 x 21 inches to a sheet ("quad") since the size of a sheet is really 22.75 x 17.0-17.5 inches. It is contended that the correct square footage for an average sheet is 2-5 percent more than the 2.63 figure assumed by AAA. Further, 47 and 12 sheets were allocated (in an amendment to the original invitation) to item Nos. 1 and 2, respectively, whereas AAA used the figures 43 and 12.5, respectively, in making its calculations. This fact, it is felt, makes the intended price unclear because the question allegedly arises as to which group of figures (47:12 or 43:12.5) AAA would have actually used but for its mistaken calculations.

Finally, issue is taken with the 828 number of photos upon which part of the AAA price is calculated. It is noted that acreage as stated by the attorney for AAA is not alone controlling and that the number of photos does indeed have an important effect on price. Thus, to the degree that the number of photos has been underestimated by AAA, so is the AAA price underestimated. As regards the AAA attorney's contention that 828 photos will result in 1,656 photo models (stereo pairs), it is contended that the number of stereo pairs will rather be somewhat less than 827 in number and about 400 typed photos. All of this indicates the impossibility of ascertaining the intended price that AAA would have bid but for its miscalculations, especially as it is contended that the number of photos will cover only 1/3-2/3 of the ground area in question.


We do not believe these contentions are sufficient to reverse our above conclusion on this matter. As regards the first contention, AAA apparently chose to round down the 55.5 figure to 54.3 and to keep the 146 figure as it was. The latter two numbers alone were on the worksheets, and, consequently, we believe the figure of 146 (and not the 142.8 which was never intended to be used) must be the one looked to. However, assuming for the sake of argument that the range of prices computed by this party is acceptable, thereby causing an area of uncertainty of \$393.16,

B-191658

7

for the reasons already given above, we believe the area of uncertainty to be so small as to be negligible. George C. Martin, Inc., supra.

As regards the final two areas of contention, we are unable to say that AAA was correct or incorrect in reaching the judgments which led it to compute its bid price in the manner presented. However, the matters involved in these areas go to the business judgments of AAA and as such would not serve as bases for any correction or withdrawal of the AAA bid. 51 Comp. Gen., supra.

  
Acting Comptroller General  
of the United States