

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

26993

**FILE:** B-213177 **DATE:** December 9, 1983  
**MATTER OF:** D. L. Draper Associates

**DIGEST:**

Where protester seeking correction of its bid to within .26 percent of the next low bid submits only a computer printout and an unsworn written statement as evidence of its intended bid, contracting officer's determination that such evidence does not constitute the clear and convincing evidence of the asserted intended bid price required to allow correction is not unreasonable. The closer an asserted intended bid is to the next low bid, the more difficult it is to clearly establish that it is the bid actually intended.

D. L. Draper Associates seeks our review of a decision by the Forest Service, Department of Agriculture, which denied correction of its bid to provide janitorial services at the United States Forest Products Laboratory in Madison, Wisconsin, under invitation for bids (IFB) No. FPL-83-11. Although the Forest Service found that Draper had made a mistake in its bid, it rejected Draper's request for correction on the grounds that Draper failed to provide sufficient proof of its intended bid price. We affirm the Forest Service's decision and deny the protest.

The IFB sought bids for an initial contract period of 1 year (item No. 1) and for 2 additional option years (item Nos. 2 and 3). Bidders were to indicate not only the total price for each year but also the per month price. Draper submitted the apparent low bid, offering a price of \$8,749 per month for a total of \$104,988 per year for each of the base and option years. Consolidated Maintenance submitted the apparent second low bid, bidding \$141,360 for the base year, \$147,012 for the first option year, and \$152,892 for the second option year.

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The contracting officer, considering himself on notice of a possible mistake in bid because of the approximately 25 percent disparity between Draper's price for the base year and that of Consolidated Maintenance, and because Draper's bid was approximately 34 percent less than the government estimate of \$159,996, requested that Draper verify its bid. Draper responded that its bid should have been \$140,988, not \$104,988, an error of approximately \$36,000, equal to about one-third of its bid price. Draper subsequently submitted a written request for correction, enclosing a computer printout of a computer file allegedly created before bid opening and which showed a summary of projected costs and profit. The printout indicated that Draper foresaw total labor, material, administrative and overhead costs to perform the contract of \$126,888.79 and allocated a profit of \$14,098.75, for a total of \$140,987.53. In an accompanying letter, Draper explained the mistake as resulting from the inadvertent transposition of "140" to "104" when it entered the bid price on the bid form, with the per month figure derived by dividing the annual bid price indicated on the bid form by 12.

In response to Draper's request, the contracting officer determined that, while the "gross disparity" between Draper's bid and the next low bid constituted clear and convincing evidence that Draper had indeed made a mistake in bid, there was insufficient evidence of the intended bid price to permit correction. The contracting officer therefore denied the requested correction and instead offered Draper the option of requesting withdrawal of its bid. Draper thereupon filed this protest with our Office.

A bidder who seeks correction of an error in his bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended bid price. See G.N. Construction, Inc., B-209641, June 2, 1983, 83-1 CPD 598. See also Federal Procurement Regulations § 1-2.406-3(a) (1964 ed., amendment 165). The closer an asserted intended bid is to the next low bid the more difficult it is to establish that it is the bid actually intended and, for that reason, correction is often

disallowed when a corrected bid would come too close to the next low bid. American Museum Construction Division of Byer Industries, Inc., 62 Comp. Gen. 284 (1983), 83-1 CPD 337. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. See G.N. Construction, Inc., supra.

The contracting officer concluded that Draper had not presented clear and convincing evidence of its intended bid "because computer printouts can easily be tampered with, and because of the inconsistency in the profit required percentage as opposed to the dollar amount of profit shown on the printout." The contracting officer also thought it would undermine public confidence in the integrity of the competitive bidding system to permit correction of Draper's bid to within less than 1/2 of 1 percent of the next low bid.

We note first that while computer files and printouts may indeed be tampered with, so may handwritten work-sheets, which have long been recognized as valid evidence to show an intended bid price. See, e.g., G.N. Construction, Inc., supra. Moreover, it appears that the penalties prescribed by 18 U.S.C. § 1001 (1982), which we have previously indicated could apply to false statements or representations by a bidder, see Mitchell Construction Company, Inc., (B-208258, October 28, 1982), 82-2 CPD 378, would apply whether or not the false statements or representations were found in an ordinary worksheet or a computer printout submitted by a bidder. While the contracting officer apparently believes computer printouts are less reliable than work papers, it is not clear to us why the reliability of the computer printout would be so much less than the reliability of an ordinary worksheet under the circumstances here.

As his second reason for concluding that there was not clear and convincing evidence of Draper's intended bid

price, the contracting officer points to an apparent discrepancy in Draper's computer printout as to the amount of profit it had calculated. The printout indicates that a 10 percent profit was "required." However, \$14,098.75, or 10 percent of the \$140,987.53 total of profit plus estimated labor, material, overhead and administrative costs, was allocated in the printout to profit, rather than \$12,688.88, or 10 percent of the estimated \$126,888.77 total of labor, material, overhead and administrative costs alone. Nevertheless, while it may be unorthodox to estimate profit as a percentage of the total of these costs plus profit rather than as a percentage of these costs alone, we do not believe that this by itself calls into question the value of the printout as evidence of the intended bid price, since the computer could have been programmed to compute and print out a profit figure representing 10 percent of the total bid price.

Despite our reservations about the contracting officer's concerns, we are not prepared to conclude on this record that he acted unreasonably in refusing to permit correction in light of the closeness of the corrected bid to the next low bid. This varies from approximately 1/4 of 1 percent to 4 percent, depending upon whether only the base year is considered or the base year plus both option years is considered.

The IFB required bidders to bid on all items and provided that:

"(1) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s)."

Since the agency was required to determine the low overall bid on the basis of the total bid for the base year and the 2 option years combined, see Condor Maintenance, Inc., B-199006, October 7, 1980, 80-2 CPD 247, a consideration of the closeness of the corrected bid price to the next low bid should include a comparison of the total bid price for the base and option years combined. Inasmuch as Draper bid the same price for the 2 option years as for the base year, we presume that a correction of the base

year bid price to \$140,988 would correspondingly change the total bid price for all 3 years to \$422,964. The second low bidder, however, increased its price in each of the option years. As a result, Draper's corrected 3-year bid price of \$422,964 would be approximately 4 percent below the next low bid of \$441,264.

In denying correction, the contracting officer considered only the closeness of Draper's corrected bid price for the base year to that of the next low bid for the base year. We do not think the contracting officer abused his discretion in doing so, because any award under the IFB would only obligate the government for the base year unless the agency subsequently acted to exercise the options. The danger of undermining confidence in the integrity of the competitive bidding system increases not only where the difference between the corrected bid price and the next low bid for all 3 years diminishes, but also where the difference between the corrected bid price and the next low bid for the base year alone diminishes. In any case, although the difference between the bids increases somewhat if all 3 years are considered, the bids are still relatively close.

Where a procuring agency has reasonably found clear and convincing evidence of a mistake and the intended bid price, the closeness of the intended bid price to the next low bid does not preclude bid correction. Thus, where the bidder submitted not only a worksheet and an affidavit as evidence of its intended bid price, but also subcontractor telephone quotation sheets, and the agency found that this constituted clear and convincing evidence of the mistake and intended bid price, we sustained the agency determination even though the corrected bid price would be within approximately 1.5 percent of the next low bid. See G.N. Construction, Inc., supra.

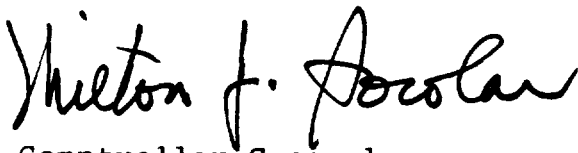
By contrast, however, Draper only submitted an unsworn statement and a computer printout as evidence of its mistake and intended bid price, while alleging an intended bid price for the base year which was within .26 percent of the next low bid. The contracting officer, confronted with the limited evidence presented, did not find it to be the clear and convincing evidence required

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for correction. In light of the closeness of the alleged intended bid to the next low bid, particularly for the base year, we cannot say that the contracting officer acted unreasonably in finding the evidence presented by Draper to be less than clear and convincing and that to allow correction would undermine public confidence in the competitive bidding system and threaten the integrity of that system. See American Museum Construction Division of Byer Industries, Inc., supra; The Foley Company, B-209844, January 24, 1983, 83-1 CPD 84; Fortec Constructors, B-203190.2, September 29, 1981, 81-2 CPD 264; National Office Moving Co., B-196282, March 10, 1980, 80-1 CPD 185; J.W. Creech Inc., B-191177, March 8, 1978, 78-1 CPD 186; Broken Lance Enterprises, Inc., B-186847, October 6, 1976, 76-2 CPD 314; Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82.

The protest is denied.

for   
Comptroller General  
of the United States