

4539

04420

Richard Feldman

PL 2

DECISION



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

FILE: B-189630

DATE: November 23, 1977

MATTER OF: Federal Contracting Corp.

DIGEST:

1. Correction of mistake may not be permitted where original worksheet lacks sufficient detail necessary to formulation of definite or exact bid price. In circumstances convincing evidence of intended final bid price is lacking.
2. In exercising its review function in mistake in bid cases where bidder requests correction, it is proper for GAO to examine bidder's worksheets for accuracy of its calculations and the convincingness of bidder's methodology.

Federal Contracting Corp. (Federal) requests upward correction of its bid under invitation for bids (IFB) No. N 62467-77-B-2817, issued by the Naval Facilities Engineering Command (Navy). The Navy, however, believes Federal may withdraw its bid pursuant to Armed Services Procurement Regulation (ASPR) 2-406.3 (a)(3) (1976 ed.) but has refused to permit correction. Award has not been made pending resolution of this protest.

The solicitation requested bids for the installation of range hoods for family housing units at the Naval Training Center, Orlando, Florida. On June 2, 1977, the following bids were received and opened:

Federal Contracting Corp.	\$ 37,618.00
Emerald Maintenance	54,428.00
Frank J. Moran, Inc.	61,900.00
JOSTCO Eng. & Const. Co.	82,866.00

B-189630

Vogt Construction Co.	83,394.00
Rogers Engr. & Const. Co.	83,600.00
Boyce Construction Corp.	127,700.00
Government Estimate	\$ 67,344.00

Because Federal's bid was considerably lower than the other bids received and the Government estimate, a request was made for verification and confirmation of Federal's bid. Federal requested correction of its bid from \$37,618.00 to \$47,618.00 based on an alleged transcription error. Federal has submitted its original worksheet and an affidavit from the office manager in support of the mistake. The affidavit states that an extremely heavy workload contributed to the failure to properly check the final figures and that \$37,618 was inadvertently typed instead of \$47,618.

The Navy has concluded that despite the documentation submitted by Federal and the heavy workload which allegedly contributed to the error, clear and convincing evidence is lacking to permit Federal to correct its bid. See ASPR 2-406.3(a)(3) (1976 ed.). The only basis stated for the Navy's conclusion is the fact that an original bid figure "which we decipher as \$23,386 had been inserted [on the bid form] and 'whited' out" by superimposing correction material. The Navy states that Federal gave no explanation for the insertion and correction of this figure and therefore concludes that "the existence of this other figure lends little credence to the explanation given by the bidder that a [transcription error] of the '3' and '4' * * * is involved."

Federal was unaware that the instant bid was the one which contained the "whited" out figure until the Navy informed us of this fact in its report. Federal now states that it was preparing three other bids at the time the instant bid was prepared. The office manager has stated that the figure of \$23,386 was the intended bid price for another procurement which was typed on the wrong bid form. He apparently then "whited" out this figure and typed \$37,618 instead of the intended price of \$47,618.

B-189630

In our opinion the "whited" out figure of \$23,386 bears no relation to the type of error alleged. It relates to an altogether different error than that now sought to be corrected. Moreover, this price is not reflected in any of the documentation submitted by Federal. The most recent error occurred in the transcription of the bid amount from the worksheet and file copy of the bid form to the original bid document. The fact that an earlier error also occurred and correction was attempted is not necessarily relevant to the convincingness of the evidence produced to show the subsequent error.

Our Office consistently has held that to permit correction of an error in bid prior to award, 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. 49 Comp. Gen. 480, 482 (1970); 51 id. 503, 505 (1972). These same basic requirements for the correction of a bid are found in ASPR 2-496.3(a) (3) (1976 ed.) which provides:

"When the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; * * * If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

We stated in 53 Comp. Gen. 232, 235 (1973) that 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. Moreover, the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the agency whose decision will not be disturbed by our Office unless it is unreasonable.

Worksheets of a bidder may provide clear and convincing evidence of a mistake in bid if they are in good order and indicate the intended bid price. Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223. In this regard, we believe that in exercising

B-189630

our review function, it is proper to examine the worksheets for the accuracy of its calculations and the convincingness of the bidder's methodology in computing its bid. See Oneida Chemical Company, Inc., O'Brian Cleaning Company Inc., 53 Comp. Gen. 597 (1974), 74-1 CPD 73.

Federal's worksheet shows that it estimated the number of hours necessary to install one range hood together with other installation operations. The time required per unit was multiplied by a single wage rate thereby producing the labor cost per unit. Federal then applied its overhead and profit rate which produced a unit price. This price was multiplied by the number of units involved for a total of \$47,008. Federal then added \$610 for travel for two men from Los Angeles to Orlando for a total bid price of \$47,618.

Federal's worksheet does not convince us that it was intended to produce a definitive bid price. It lacks the refinements of sufficiently detailed information necessary to the formulation of a definite bid price. A number of factors lead us to the conclusion that the worksheet produced a "ball park" figure rather than a close estimate of the bid price. Generally, a close estimate would seem to require the use of more fractional hours. Also, the use of a single labor rate is too crude a method for estimating labor costs because we assume the contractor would employ supervisory as well as other workers at different rates of pay. Moreover, the travel costs from Los Angeles to Orlando, presumably round-trip, seem inadequate based on economy air fares available. While we have no reason to question the authenticity of the worksheet, we are not convinced that the price stated thereon was intended to be the firm's final bid price.

Accordingly, we agree with the Navy's conclusion that the bid may be withdrawn but not corrected.

Deputy


Comptroller General
of the United States