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**DECISION**

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

*[Protest of Army Contract Award]*

FILE: B-196369

DATE: March 6, 1980

MATTER OF: Hanauer Machine Works DLG04035

**DIGEST:**

Contracting activity improperly permitted awardee to waive right to claim mistake-in-bid claim where available evidence left uncertain whether awardee's bid would have been low had mistake not been made.

Hanauer Machine Works protests award to Bedford Gear Division of Joy Manufacturing Co. under Army-Tank Automotive Materiel Readiness Command (Army) IFB No. DAAEO779-B-0141 for M113A1 vehicle final drive assemblies.

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AGC000518  
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The controversy arose because the solicitation used in this instance, unlike prior procurements, included a modified set of drawings which substituted a manufacturing note requiring that forgings be used to fabricate the drive assemblies. Hanauer complains that Bedford bid on the basis of castings, rather than forgings. Bedford freely admits that a mistake was made. Based on a quotation for forged aluminum parts obtained after bid submission, Bedford states it would have bid a unit price of \$1,039.80, but for its error in failing to realize that the Army had added the forging requirement.

Bids were submitted for the original and for each option quantity, as follows:

Bedford Gear Division.....	\$ 985.50
Berkley Machine Products, Inc. ....	1,066.30
Hanauer Machine Works.....	1,309.55
FMC Corporation.....	1,316.74
S & H Products, Inc.....	1,394.66

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The Army reports that it noted a significant disparity between the two lowest and remaining three bids at the time bids were opened. Consequently, it asked that Bedford and Berkley verify their bids. According to the Army:

"Bedford Gear's telephone reponse indicated that it had based its original bid price on the casting method. However, after evaluating its bid in view of the forging requirement, Bedford Gear determined that it could economically manufacture the item at the current bid price despite the additional forging cost of \$55.20 each \* \* \*. [Bedford] declined to claim a mistake and instead verified its bid price per letter dated 11 September 1979 \* \* \*."

Berkley responded by indicating that it understood that forgings were required and also verified its price. The Army, however, views Berkley as nonresponsible, due to that firm's alleged unsatisfactory performance of a number of other Government contracts. In view of the difference between Bedford's and Hanauer's bids, the Army concluded that award to Bedford would not be prejudicial to other offerors.

Hanauer believes that award to Bedford was improper because there was no agreement by Bedford at the time set for bid opening that forged parts would be furnished. We do not find it necessary, however, to determine whether the kind of "mistake" alleged is subject to correction.

A contracting officer ordinarily is required to reject a bid which is clearly mistaken even if the bidder denies making a mistake, unless the bid is correctable. Lilly Distributing Company of San Antonio, B-193692, March 23, 1979, 79-1 CPD 199. We have, however,

"permitted an exception to the rule against waiver of mistake, if it is clear that the

bidder would have been lowest (in a procurement), absent the mistake, even though the amount of the intended bid [can]not be proven for the purpose of [allowing] bid correction." 52 Comp. Gen. 258, 262 (1972). (Emphasis added.)

It is not clear exactly how much of an error Bedford was permitted to waive. The Army did not take retooling costs into consideration, because Bedford contended it would have applied them to future contracts. The record indicates that at minimum, a \$57,800 one-time cost for dies and a \$213.45 per unit allowance for additional costs for increased difficulty in handling forged material are involved. In the absence of convincing evidence showing that Bedford would not have included these costs in computing its bid, the standard set out above requires, in our view, that they be considered. If these costs are allocated among the 1,424 drive assemblies ordered initially, Bedford's recalculated bid exceeds \$1,239 per unit exclusive of profit. If profit for the additional work is taken into consideration, the difference between Bedford's price and Hanauer's \$1,309.55 unit price is narrowed considerably. In the circumstances, it is not at all clear that Bedford's price would have been low had no mistake been made. Even if Berkley is not considered to have been in line for award, therefore, award to Bedford is not within the exception to the rule against waiver.

The protest is sustained. We note that the Bedford award anticipates a substantial lead time for production of the die needed to produce the final drive assemblies. Since at worst the Government can acquire the die, minimizing termination costs, we recommend that the award to Bedford be terminated for the convenience of the Government and the procurement be reopened for award consistent with the Defense Acquisition Regulation. By separate letter we are today advising the Secretary of the Army of our decision.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

A handwritten signature in cursive script, reading "Milton J. Arosow".

Acting Comptroller General  
of the United States