

DECISION

24598
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209870**DATE:** March 22, 1983**MATTER OF:** Hughes & Smith, Inc.**DIGEST:**

1. When bid is an unqualified offer to perform the exact work called for in an invitation, mistake claim does not render bid nonresponsive.
2. Even if bidder is to blame for mathematical or clerical mistake, correction of otherwise responsive bid is permissible under some circumstances. Acceptance of bid by contracting officer who is aware of error would be overreaching, and rejection is not required if there is clear and convincing evidence of intended bid and bid remains low.

Hughes & Smith, Inc. protests the decision by the National Park Service, Department of the Interior, to permit Beta Construction Company to correct a mistake in its bid for repairs to the National Visitor Center in Washington, D.C. The protester contends that the agency should have rejected the bid as nonresponsive. We deny the protest.

Six bidders responded to solicitation No. 3900-82A at opening on September 23, 1982. Of these, Beta Construction was low at \$1,881,571; Hughes & Smith was second low at \$2,285,467. Before award, Beta Construction alleged a mistake and requested correction. The firm's original worksheets showed that in preparing its base bid, a \$133,990 subtotal for one item, covering temporary roof repairs, had not been included in the total on page one or carried to page two of its bid sheet. Beta Construction sought to add this amount, plus \$54,936--representing 41 percent for overhead, profit, and a bond--to its bid price.

The contracting officer referred the case to National Park Service Headquarters, recommending correction. On the basis of the worksheets and an affidavit

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from the individual who had prepared the bid, the Park Service concluded that clear and convincing evidence existed to establish both the mistake and the intended bid. Thus, Beta Construction was permitted to increase its bid by \$188,926, making its total bid \$2,070,497. Since this was still low, the Park Service awarded a contract to the firm on September 30, 1982.

The protester does not challenge the evidence supporting the existence of the mistake or the intended bid. Rather, Hughes & Smith maintains that the mistake should not have constituted grounds for adjustment of Beta Construction's original bid, but should have rendered the bid nonresponsive. Hughes & Smith argues that an experienced, responsible bidder would check its figures before submitting a bid and implies that to allow correction after opening compromises the procurement process.

First, we do not find Beta Construction's bid nonresponsive. The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, so that acceptance will bind the contractor to perform in accord with all its terms and conditions. See 49 Comp. Gen. 553, 556 (1970).

Since Beta Construction did not take exception to any solicitation provision, its bid was responsive. The mistake claim does not in any way render it nonresponsive. The question therefore is whether the firm should have been permitted to correct its bid despite what Hughes & Smith apparently regards as carelessness in preparation.

If, as in this case, a bidder makes a mathematical or clerical error (as opposed to a mistake in judgment), in appropriate circumstances relief is available even though the bidder is to blame for it. See generally Ruggiero v. United States, 420 F.2d 709, 713 (Ct. Cl. 1970) (citing cases in which bidders were "guilty of egregious blunders"); 50 Comp. Gen. 655, 659 (1971). If a contracting officer accepts a bid when he knows or should know that it is based on or includes a mistake, he is overreaching. Id.

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We recognize that correction of mistakes after bid opening and the disclosure of prices compromises the integrity of the competitive system, at least to some extent. Nevertheless, where the evidentiary requirements and regulatory procedures for bid correction are strictly followed, the Government should have the benefit of a corrected bid if it is still low. See PK Contractors, Inc., B-205482, April 22, 1982, 82-1 CPD 368.

Since Hughes & Smith has not challenged the determination that both Beta Construction's mistake and intended bid were documented by clear and convincing evidence, there is no legal basis for rejecting Beta Construction's responsive bid.

The protest is denied.

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Comptroller General
of the United States