

DECISION

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

26604

FILE: B-212497**DATE:** October 31, 1983**MATTER OF:** Butler Corporation**DIGEST:**

Where mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of the mistake and of the intended bid price by submission of worksheets and an affidavit showing that the mistake resulted from the dropping of a zero in the calculation of labor costs, there is a reasonable basis for the agency determination to allow bid correction to reflect the intended bid.

Butler Corporation (Butler) protests the award of a contract by the Veterans Administration (VA) to Jenkins Bros. Roofing, Inc. (Jenkins), under invitation for bids (IFB) No. 516-070-83, a procurement for the removal and replacement of roofing at the VA Medical Center, Bay Pines, Florida. Butler objects that Jenkins should not have been permitted to correct a mistake in bid price. Butler contends that either award should be made to Jenkins at the original, uncorrected bid price, or Jenkins' bid should be withdrawn from consideration and award made to Butler, the second low bidder, or that the IFB should be canceled and the requirement resolicited.

We find the protest without merit.

Jenkins submitted the low bid of \$62,813, and Butler submitted the second low bid of \$110,510. The government estimate was \$169,000, and there were three other bids ranging from \$117,930 to \$188,919. Because of the discrepancy between Jenkins' bid and the government estimate and the other higher bids, the VA contracting officer called Jenkins on May 31, 1983, 1 hour after bid opening, and requested verification of Jenkins' bid price. Jenkins subsequently advised the contracting officer that it had found a significant mistake in its bid and on June 7 Jenkins brought the contracting officer a letter and worksheet explaining that the mistake resulted from the omission of a zero from the total cost of the "put-back" labor for a tile roof. Jenkins explained that the total price mistake, including overhead and profit markup of 28 percent on the omitted labor cost, amounted to \$41,057,

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resulting in an intended bid of \$103,870. Jenkins requested permission either to correct or withdraw its bid. The VA contracting officer permitted Jenkins to correct its bid to \$103,870, and awarded Jenkins the contract.

A bid may be corrected where the bidder provides clear and convincing evidence of the existence of a mistake, the manner in which the mistake was made, and the intended bid price, and the bid is low both as corrected and uncorrected. Specialty Systems, Inc., B-204577, February 9, 1982, 82-1 CPD 114; Federal Procurement Regulations (FPR) § 1-2.406-3(a)(2) (1964 ed., circ. 1). Although 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. The weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless it is without reasonable basis. 53 Comp. Gen. 232 (1973).

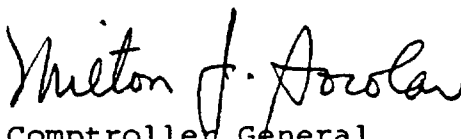
We have examined Jenkins' worksheet and accompanying letter and a subsequent affidavit. The worksheet reflects Jenkins' claim that the "put-back" labor estimate was 3,240 hours and the applicable labor rate was \$11 per hour, but the total of this "put-back" labor cost was entered as \$3,564, instead of the correct figure of \$35,640. The worksheet also shows that a 28-percent markup was calculated on the basis of the incorrect \$3,564 figure. As a result of this mathematical error, the bid price was understated by \$41,057. Thus, the worksheet and the affidavit establish that the price mistake resulted because a zero was dropped from a labor cost calculation and by the application of the markup percentage to the mistaken calculation. Accordingly, there was a reasonable basis for the VA's finding that there is clear and convincing evidence of the mistake, of how it was made, and of the intended bid.

Butler also argues that the mistake claim and the supporting material should have been provided immediately after bid opening instead of 1 week later. FPR § 1-2.406-1 specifically requires a contracting officer to examine bids for mistake after bid opening and, under FPR § 1-2.406-3(d)(1), the contracting officer is directed to seek bid verification when, as here, a bid is significantly

out of line with the government estimate or other bids. A contracting officer who accepted a bid which he knew or should have known was mistaken would be overreaching and such a bid may not, in good faith, be accepted as submitted. Hughes & Smith, Inc., B-209870, March 22, 1983, 83-1 CPD 289. Our Office has specifically held that a contractor must be given a reasonable time to review its bid prior to verification, and we have found that a 1-week period for such review is reasonable. Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393. In this connection, we note that although the worksheets were not delivered to the contracting officer until June 7, Jenkins presented the contracting officer with its cost breakdown for the \$62,813 bid price on June 1 and advised the contracting officer that a mistake was probable and that it was in the process of determining where the mistake was made. Also, on Friday, June 3, Jenkins advised the contracting officer by telephone that a mistake had been found and that it would bring all the bid documents to the Medical Center the following Tuesday, June 7, which it did.

In view of our determination that the VA properly awarded the contract to Jenkins at the corrected bid price, we will not address the remedial alternatives suggested by Butler.

We deny the protest.

for 
Comptroller General
of the United States