

DECISION

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

27240

FILE: B-213040**DATE:** January 19, 1984**MATTER OF:** O.N.E., Inc.**DIGEST:**

1. Where low bidder alleges mistakes in bid prices in response to verification request, but fails to submit adequate evidence clearly establishing its intended bid, the agency reasonably allowed withdrawal, but not correction.
2. Protester's complaint that procuring agency wrongfully denied protester opportunity to enter into negotiations with agency to discuss mistakes in protester's bid is without merit since method of procurement used was small business restricted advertising, a method permitted under negotiation authority in which formal advertising procedures are followed to select a contractor among small business concerns.

O.N.E., Inc. (O.N.E.), protests the determination by the Department of State not to permit O.N.E. to correct mistakes in its bid in response to invitation for bids (IFB) No. 0000-32-0049, a total small business set-aside, for a 1-year requirements contract to supply fabricated steel patch panels and ducts.

We deny the protest.

Bidders were required to price individual items in two groups contained in the solicitation schedule. Award was to be made separately for each group based upon the lowest price for the group.

O.N.E. and two other bidders submitted bids for Group II items. O.N.E. was the apparent low bidder. O.N.E. quoted unit prices of \$26.75 and \$55.75 for items 1 and 2, respectively, of the group. The other bids received for these items were:

| Item | A.C.S. International Corp. (A.C.S.) | J.B. Mann Corp. | Government Estimate |
|------|-------------------------------------|-----------------|---------------------|
| 1. | \$142 | \$259.41 | \$163 |
| 2. | \$170 | \$254.03 | \$174 |

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Since O.N.E.'s prices for these items were so much lower than the other bids and the government estimate based on prior contracts, the contracting officer requested that O.N.E. verify its prices. O.N.E. advised the contracting officer that through a clerical error, the digit "1" had been omitted from its bid prices for items 1 and 2 and that the actual prices should have been \$126.75 and \$155.75. O.N.E. explained that it received quotes for these items from the firm's proposed subcontractor and that O.N.E. intended to supply the items to the government without additional mark-up. Therefore, the bid as corrected still would be low. To support its intended price, O.N.E. submitted a post-bid-opening message from the proposed subcontractor to O.N.E. confirming a pre-bid-opening quote for \$126.75 and \$155.75 each.

Upon review of this evidence, the procuring activity concluded that there was clear and convincing evidence of O.N.E.'s mistake, but not O.N.E.'s intended bid price. The procuring activity based this on O.N.E.'s failure to provide any documents such as original worksheets or other data used in preparing the bid to show its intended prices for the items. The only evidence submitted, the above-mentioned message, according to the procuring activity, failed to show that the firm actually had intended to use the subcontractor's prices in its bid and, therefore, decided that O.N.E. should be allowed to withdraw, but not correct its bid, citing Federal Procurement Regulations (FPR) § 1-2.4063(a) (1964 ed. circ. 1). Subsequently, the contract was awarded to the next low bidder, A.C.S.

O.N.E. maintains that the message from its proposed subcontractor, along with its explanation concerning how the mistakes in its bid were made, is sufficient evidence to permit correction of O.N.E.'s bid under the above-cited regulation.

In order to permit correction of an alleged error in bid price, the bidder must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. Pneumatic Construction Company, B-207871, August 31, 1982, 82-2 CPD 193; Panoramic Studios, B-200664, August 17, 1981, 81-2 CPD 144; FPR § 1-2.406-3, supra. Additionally, 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 there is no reasonable basis for the decision. Pneumatic Construction Company, supra.

Based upon our review of the record, we conclude that the Department of State acted reasonably. The subcontractor message does not establish that O.N.E. intended to offer the items at its subcontractor's prices; it merely shows the subcontractor's prices for the items. Also, the message is dated after bid opening. Further, O.N.E. failed to submit any material used in the actual preparation of its bid, even after the agency pointed out this failure in the protest report to our Office. Therefore, we find no probative evidence which supports O.N.E.'s allegation concerning its intended prices for the items.

O.N.E. also complains that, since the procurement was negotiated rather than formally advertised, the procuring activity wrongfully denied O.N.E. the opportunity to enter into negotiations with the agency in order to discuss O.N.E.'s intended bid price.

There is no merit to the protester's complaint. While statutory negotiation authority was cited in the IFB, this is because small business set-asides are always technically considered to be negotiated procurements. FPR § 1-1.706-8 (1964 ed. amend. 192). Nonetheless, the regulations prescribe a special method of procurement to be conducted in the same manner as formal advertising which is applicable to small business set-asides, i.e., small business restricted advertising. Here, the procurement method clearly used was small business restricted advertising; therefore, formal advertising procedures were properly followed to select a contractor from among small business concerns. See Chameleon Company, Inc., B-197244, July 22, 1980, 80-2 CPD 59.

Protest denied.

for Milton J. Fowler
Comptroller General
of the United States