

**DECISION**

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

**FILE:** B-220982 **DATE:** March 6, 1986  
**MATTER OF:** Guardian Construction

**DIGEST:**

1. Regulatory requirement that a protest contain a detailed statement of the legal and factual grounds for it is satisfied where the protester submits a copy of an agency-level protest, since the purpose of the regulation is to inform the contracting activity of the basis of protest and to permit it to respond in a timely report to the General Accounting Office.
2. Where a mistake in an apparent low bid is alleged before award, and the bidder presents clear and convincing evidence of the mistake and of the intended bid price (which as corrected remains low), an agency decision to allow correction is reasonable although the bid, as corrected, is approximately 1 percent less than the second low bid.

Guardian Construction protests the award of a contract to Sunrise Commercial Contracting, Inc., under invitation for bids (IFB) No. 645-44-85, issued by the Veterans Administration's (VA) Medical Center, Pittsburgh, Pennsylvania. Guardian contends that VA improperly permitted Sunrise to correct a mistake in its bid.

We deny the protest.

The solicitation, issued August 24, 1985, sought bids for the renovation of multipurpose rooms at the medical center. Five bids were submitted in response to the solicitation; Sunrise's was the low bid at \$119,691, and Guardian's was second low at \$136,870. In view of the disparity between the two low bids, the VA requested Sunrise to verify its price.

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Sunrise responded that its bid contained a clerical error and, after conferring with agency personnel, requested that it be corrected. In support of this request, Sunrise submitted its original bid preparation worksheets and an adding machine tape. These materials demonstrate that Sunrise misplaced a decimal point when entering the cost for electrical subcontract work on an adding machine for the purpose of totaling its expected costs for this work. The cost for this item, as listed on the worksheets, was \$16,000, but only \$1,600 was entered on the adding machine. Moreover, the firm's final bid price, as indicated on the worksheets, includes a markup of 10 percent for work performed by subcontractors. This results in a total error of \$15,840 in Sunrise's bid. As corrected, the bid is \$135,531, which is only \$1,339, or approximately 1 percent less than Guardian's.<sup>1/</sup> On the basis of this evidence, the VA permitted Sunrise to correct its mistake.

Guardian, while acknowledging that the acceptance of Sunrise's bid may be legally proper, argues that it should nevertheless be rejected in order to maintain the integrity of the competitive bidding process. By permitting an apparent low bidder to raise its price, especially where the revision results in the low bid being extremely close to the next low one, Guardian contends, the VA is encouraging fraud in future procurements.

Guardian initially raised this concern in an October 1, 1985, protest filed directly with the contracting officer. After the VA denied this protest, Guardian filed with our Office.

Preliminarily, VA argues that we should dismiss Guardian's protest because of the firm's failure to comply with our Bid Protest Regulations, 4 C.F.R. § 21.2(c)(4), which require a protest to include "a detailed statement of the legal and factual grounds of protest including copies of relevant documents."

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<sup>1/</sup>	<u>Error</u>	<u>Error + Markup</u>	<u>Corrected Bid</u>	<u>Difference</u>
	\$16,000	\$14,400	\$119,691	\$136,870
	- 1,600	+ 1,440	+ 15,840	-135,531
	<u>\$14,400</u>	<u>\$15,840</u>	<u>\$135,531</u>	<u>\$ 1,339</u>

We do not believe dismissal is warranted in this case. The purpose of the regulatory provision is to inform agencies of the precise basis of protest, so as to permit them to provide our Office with a responsive, fully documented report within the time required by the Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553(b)(2) (West Supp. 1985). Where, as here, the protester attaches to its submission to our Office a copy of the agency-level protest and response and indicates that it is appealing that response, the purpose of the regulation is satisfied, since the agency is already aware of the precise basis of protest and should not be prejudiced in its ability to provide a timely report.

With regard to the merits of Guardian's protest, to be allowed to correct an error in a bid before award, a bidder must submit clear and convincing evidence showing both the existence of the mistake and the bid actually intended. Federal Acquisition Regulation (FAR), § 14.406-3 (FAC 84-5, Apr. 1, 1985). Where, as here, correction would not displace any other bid, such evidence may consist of the bid itself, as well as the bidder's worksheets and other relevant documents. See G.N. Construction, Inc., B-209841, June 2, 1983, 83-1 CPD ¶ 598. Moreover, the closer an asserted intended bid is to the next low bid, the more difficult it is to establish that it is the bid actually intended. See D.L. Draper Associates, B-213177, Dec. 9, 1983, 83-2 CPD ¶ 662. The fact that an intended bid is very close to the next low bid, however, does not automatically preclude correction. See G.N. Construction, Inc., B-209841, supra, sustaining an agency determination to allow correction where the corrected price was within 1.5 percent of the next low bid.

The authority to permit bidders to correct mistakes alleged after bid opening but before award is generally vested in the procuring activity. FAR, § 14.406-3. We will not disturb an agency's decision concerning bid correction unless it lacks a reasonable basis. See Aleutian Constructors, B-215111, July 12, 1984, 84-2 CPD ¶ 44.

After reviewing the record here, we conclude that VA's decision to allow Sunrise to correct its bid was reasonable. First, we note that since there was no displacement, VA was justified in reviewing Sunrise's worksheets and adding machine tape to determine the existence of a mistake and the intended bid price. See D.L. Draper Associates, B-213177, supra. Moreover, these materials establish that the mistake

occurred due to a misplaced decimal in the cost for electrical subcontract work when this cost was entered on an adding machine. Additionally, since these materials show a uniform 10-percent markup for subcontracted items, they also clearly establish the intended bid price. Thus, although Sunrise's corrected bid was within 1 percent of the bid submitted by Guardian, we have no legal basis to object to the VA's decision to allow Sunrise to correct its bid.

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleave  
General Counsel