



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H.A. Lewis, Inc.

File: B-249368

Date: November 16, 1992

Jeffrey D. Pearlman, Esq., Maguire, Toghia, & Orbach, for the protester.
Amy J. Brown, Esq., General Services Administration, for the agency.
Jeanne W. Isrin, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's refusal to permit upward correction of low bid was unobjectionable where documentation furnished by the bidder did not clearly and convincingly support bidder's claim as to how mistake occurred, so that intended price was not clear.

DECISION

H.A. Lewis, Inc. (HAL) protests the General Services Administration's (GSA) award of a contract to John R. Hundley, under invitation for bids (IFB) No. GS-09P-92-KTC-0039, for comprehensive renovation of the Federal Building and Courthouse in Pasadena, California. HAL argues that the agency improperly allowed it only the option of withdrawing its apparent low bid, instead of permitting an upward correction of the bid.

We deny the protest.

The solicitation called for bidders to submit a base bid plus bid prices for three option items (numbered 1, 3, and 4), and unit and extended prices for concrete repair. Eleven bids were received by the May 26 bid opening. Bids were evaluated by totaling the base bid price, the three

option prices, and the extended unit price for the concrete repair. HAL submitted the low bid, priced as follows:

Base Bid	\$5,152,000
Option No. 1	170,000
Option No. 3	25,500
Option No. 4	500
Extended Price for Concrete Repair	60,000
Total Bid	<u>\$5,408,000</u>

Because HAL's bid was considerably lower than the government estimate and the second low bid (\$5,925,451), the contracting officer requested HAL to verify its bid. On May 26, HAL orally advised the contracting officer that its total bid price was too low due to an arithmetic mistake in totaling its bid and a failure to include prices for options 1, 3, and 4. On May 27, HAL submitted a letter in which it reiterated its claim of mistake and stated that its intended bid was \$5,621,851, an increase of \$213,851. HAL requested that it be allowed to correct its bid or, alternatively, that it be permitted to withdraw. The letter did not explain the alleged error, but stated that HAL was "in the process of preparing the exhibits and will submit them within two days."

On May 29, HAL submitted a letter in which it claimed that it had made two errors in calculating its base bid. First, it claimed an arithmetic error in the final addition of figures for its base bid, resulting in the understatement of the base bid price by \$10,000. Second, it claimed that it had mistakenly subtracted the three option prices from the base bid. Specifically, HAL explained that it had intended to compute a total bid price for all of the required work, and then subtract out amounts for the options and the price for the concrete repair, because those prices had to be listed separately on the bid schedule. The mistake consisted of HAL's failure to add the option prices to the totaled base and concrete repair prices before subtracting out the option prices; instead, HAL subtracted the option prices from the base bid itself, resulting in a total bid that did not include the option prices, allegedly contrary to HAL's intent.

The "General Summary" worksheet submitted in support of HAL's request for correction contained, from left to right: task/supply descriptions; separate columns for labor, material, and subcontract prices; a "Total" column; and three columns with entries for the price of each element of work comprising each option. The sum appearing at the bottom of the "Total" column was \$5,408,000, after the addition of labor taxes, a 4.5 percent fee, and 1.2 percent

for bond and insurance costs. The sums at the bottom of the option columns were \$165,500 for option 1, \$27,000 for option 3, and \$260 for option 4. In addition, a second set of option prices--\$170,000, \$25,500, and \$500--and an entry for concrete repair--\$60,000--were listed in the bottom lefthand corner of the worksheet. (According to the protester, these latter option totals represented the sums after having been rounded off and "evaluated and adjusted.") Next to these adjusted option prices appears a calculation showing the subtraction of the option total (\$256,000) from the sum of the "Total" column (\$5,408,000), resulting in a total of \$5,152,000, that is, the amount of HAL's base bid.

HAL calculated its corrected bid by totaling the three prices entered under the option columns (not the adjusted option prices), adding a 4.5 percent fee and a 1.2 percent bond and insurance factor (which would have been applied had the options been included in the total bid), and then correcting for the \$10,000 understatement due to the error in addition. This recalculation increased the base bid by \$213,851, to \$5,365,851, and increased the total bid to \$5,621,851.

After being advised to submit any further information in support of its intended bid, HAL, by letter of June 10, offered a more detailed explanation of how its bid was prepared and the errors made, with supporting documentation and affidavits to establish its intended bid. However, while HAL again explained the analysis by which it arrived at a correction of \$213,851, for a total intended bid of \$5,621,851, it then presented an alternative analysis, computing its intended bid by correcting for the \$10,000 arithmetic error, and then adding the adjusted option prices which had been subtracted out (in the bottom lefthand corner calculation), but this time omitting any additional amount for the fee or bond and insurance. Under this alternative analysis, HAL arrived at a correction of \$206,000, resulting in a total intended bid of \$5,614,000.

Although the contracting officer determined that the disparity in bid prices, when considered in conjunction with HAL's request for correction, provided sufficient evidence of mistake to allow withdrawal, he concluded that the supporting material was insufficient to permit correction because it did not clearly and convincingly indicate HAL's intended bid price. Specifically, the contracting officer noted that HAL had stated two different intended bid prices, either \$5,621,851 or \$5,614,000, without establishing either as its actual intended bid. More significantly, the contracting officer found HAL's explanation of how the error occurred unconvincing. He questioned HAL's claim that it had intended to add the options to the base bid and then subtract them back out, concluding that "[t]here would

appear to be no purpose for him to do so, as he was required to bid the base bid and the options separately." GSA therefore only permitted HAL to withdraw its bid, not correct it. HAL argues that correction should have been allowed.

A bidder who submits a bid containing a mistake runs the risk that correction of the bid will not be allowed. 4-S Construction, Inc., B-248090, June 16, 1992, 92-1 CPD ¶ 523. Upward correction of a bid prior to award, to be allowed, must be supported by clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. See id.; Federal Acquisition Regulation (FAR) § 14.406-3(a). Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless there is no reasonable basis for the decision. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606.

We find that GSA's determination not to permit correction was reasonable; we think the agency reasonably found HAL's explanation of the mistake--and as a result, the evidence of the intended bid--lacking. Our conclusion rests primarily on our agreement with the agency that HAL's explanation depends on a calculation that makes no sense under the circumstances. In particular, it is not clear, given the structure of the bid schedule in this IFB, why an offeror would separately calculate its option prices, and then perform the unnecessary steps of adding them into its total bid, and then subtracting them back out of the total bid to arrive at a base bid. Once the separate base and option prices were calculated on the worksheets, we see no logical explanation for performing further calculations instead of immediately inserting the separate prices in the spaces provided for them on the schedule. Since HAL's alleged mistake occurred due to this calculation, we think the absence of a logical rationale for it properly may be viewed as casting doubt on HAL's intent in preparing its bid.

Moreover, it is not clear to us how a bidder reasonably could set out to prepare detailed bid worksheets with the aim of calculating separate prices for the base and option work in separate columns, and then ultimately "forget" this overall approach by assuming that the base bid included the option prices. This is particularly so here, we think, given that the base bid HAL alleges it mistakenly took to be the total was situated on the worksheet only inches to the right of the option prices.

In addition, as noted by GSA, the two different amounts claimed by HAL injected a further element of uncertainty into the process. This is especially true in light of the fact that, as indicated above, in presenting the second alternative total bid, HAL did not endeavor to explain why it initially had calculated its alleged intended total bid differently, e.g., with profit and bonding costs added, or why the newly presented alternative was any more accurate than the first. Although the difference between the amounts (\$7,851) itself is small compared to either of the alternative corrected total bids, it provides a further reason to question whether the calculations presented represent HAL's intent at the time it prepared its bid.

HAL claims that even if its intended bid cannot be determined exactly, correction nevertheless is permissible, and should be allowed here, where the intended bid can be determined within a narrow range of uncertainty and would remain low in any case. See Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571. While correction indeed may be permitted where the intended bid can be determined within a range of uncertainty, this is possible here only if HAL's two alternative explanations of the mistake are accepted as clear and convincing evidence establishing the range. As discussed above, however, we believe the evidence presented, as a whole, leaves reasonable doubt as to HAL's intent at the time it prepared its bid, and thus does not meet the stringent clear and convincing standard.

We conclude that HAL has not presented clear and convincing evidence in support of its intent when preparing its bid, and that, as a result, there is reasonable doubt as to HAL's intended bid. Therefore, GSA reasonably refused to permit upward correction of HAL's bid.

The protest is denied.


James F. Hinchman
General Counsel