



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J. Schouten Construction, Inc.

File: B-256710

Date: June 6, 1994

Laurence Schor, Esq., Smith, Somerville & Case, for the
protester.

John R. McCaw, Esq., Department of Transportation, for the
agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency improperly denied request for bid correction where
bid remains low after correction, agency agrees that
protester's bid reflected an error in addition, and there is
clear and convincing evidence of the intended bid.

DECISION

J. Schouten Construction, Inc. protests the denial of its
request for bid correction under invitation for bids (IFB)
No. DTF11-94-B-00125, issued by the Department of
Transportation, Federal Aviation Administration, for
installation of an instrument landing system at the airport
in Salt Lake City, Utah.

We sustain the protest.

The agency issued the IFB on January 12, 1994, and 10 bids
were received by bid opening on February 10. Schouten's bid
of \$237,320 was apparently low. The next two low bids were
\$338,000 and \$338,049.

On the day after bid opening Schouten submitted a request to
correct a mistake in its bid. According to that request,
which included a copy of Schouten's worksheets, the person

preparing the bid had made an arithmetical error in adding the four numbers for costs, field overhead, overhead, and margin. The last page of the worksheets shows the following calculation:¹

Total		222,215
FOH 10		22,221.50
OH 20		48,887.30
M 15		43,998.57
BID		237,320--

According to Schouten's request for correction:

"The error is found when you add the subtotal with the field overhead, overhead and margin, the total mistakenly reads \$237,320 and should correctly read \$337,320. We obviously entered the wrong number in the first column and then placed that same wrong number on the bid sheet submitted to your office."²

In response, the contracting officer advised Schouten in a February 25 letter that, "[a]fter thorough review of your computation worksheets, it has been determined that a mistake has been made, but the evidence of the bid actually intended is not clear and convincing" Accordingly, the contracting officer requested that Schouten submit additional information, including "data used in preparing your bid, subcontractor's quotes, [and] published price lists . . . that would support the bid actually intended." The contracting officer stated that, if the documentation did not establish the intended bid price, the agency would permit Schouten to withdraw its bid, but not to correct it.

Schouten then submitted more documents relevant to its bid, but noted again that "[t]he error was clear and simple, and only involved the totals. None of the line item numbers were involved in the error." The contracting officer found that Schouten's additional submissions did not correlate to

¹Schouten states that "FOH 10" refers to field overhead, which was calculated as 10 percent of the total cost; "OH 20" refers to overhead, which was 20 percent of the total cost and field overhead; and "M 15" refers to margin, which was 15 percent of the sum of cost, field overhead, and overhead.

²The exact total was \$337,322.37, but the worksheet indicates that the total was rounded down.

cost elements in Schouten's worksheets.³ Accordingly, in a March 9 letter, she reiterated her determination that Schouten's worksheets demonstrated that a mistake had been made, but that the evidence of the intended bid was not clear and convincing. On that basis, she denied the request for correction, but permitted Schouten to withdraw its bid. This protest followed.

Generally, under Federal Acquisition Regulation (FAR) § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Whether the evidence meets the clear and convincing standard is a question of fact, and our Office will not question an agency's decision unless it lacks a reasonable basis. U.S. Gen., Inc., B-245452, Jan. 2, 1992, 92-1 CPD ¶ 8. As long as the bid remains low after correction, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id.

Here, the record appears clear, and the agency agrees that Schouten made an arithmetical error in adding the four numbers set forth above. The agency also recognizes that Schouten's bid remains low if the \$100,000 error is corrected (\$337,320 vs. \$338,000 for the next low bid). The only dispute concerns the sufficiency of the evidence indicating the intended bid. Since the only mistake alleged is the adding of the four components of the bid price and the agency agrees that Schouten did not add those numbers correctly, the correct addition of those numbers clearly indicates the intended bid.⁴

Although not expressly stated, the agency's position may reflect concern about the authenticity of Schouten's worksheets--that is, doubt that the worksheets were prepared prior to bid opening and actually formed the basis of Schouten's bid. Such concern is legitimate when a bidder requests to change its bid price; indeed, it is because of the risk that correction could lead to abuse of the competitive system that correction is permitted only where a

³For example, she was troubled that the material submitted included catalog pages with prices for equipment which could be used on the project but which did not correlate to Schouten's worksheets.

⁴As noted above, the sum is not exact, due to rounding down in the amount of \$2.37.

high standard of proof has been met. Southwind Constr. Corp., B-228013, Oct. 8, 1987, 87-2 CPD ¶ 346. As the agency notes, where correcting a bid would bring it very close to the next low bid, as in this case, the documentation supporting the claimed mistake will be subject to particularly strict scrutiny. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606.

Here, however, the record clearly establishes that the worksheets were prepared prior to bid opening and that they did form the basis of Schouten's bid, including the mistake in that bid. The worksheets identified costs for approximately 40 components, many of which were themselves the result of calculations set forth in the worksheets. Schouten has presented supporting documentation for some of those costs and has explained how it arrived at the others (many of which were simply estimates based on the company's experience). Those costs add up to the overall cost figure of \$222,215 shown on the worksheets. Moreover, our calculations confirm that the actual dollar figures in the worksheets for field overhead, overhead, and margin are, as the worksheets indicate they are meant to be, 10, 20, and 15 percent of the respective base costs, and the sum of the direct and indirect costs and margin (leaving aside the \$2.37 rounded down in the worksheets) is \$337,320, the amount claimed by Schouten. Furthermore, the full worksheets were produced promptly--they were provided to the contracting officer less than 24 hours after bid opening. Schouten has also submitted an affidavit by the person who prepared the worksheets, in which he has sworn to their authenticity and explained how they were prepared, including the error in addition which he made. The record thus provides clear and convincing evidence establishing that the worksheets are authentic and were relied on in the preparation of the bid.

The only remaining issue is whether the record provides adequate evidence of the intended bid price. The concerns raised by the agency about Schouten's underlying documentation appear to have no bearing on the calculation of that price. While the additional documentation that Schouten submitted in response to the agency's request may not have explained each cost component of Schouten's bid and may have included irrelevant material, extensive documentation was not necessary to determine the intended bid price here. There is nothing improper with a bidder's using estimates for cost components or relying on experience in other projects to calculate expected costs. Because there is no basis to question the authenticity of the worksheets, the agency's recognition of the error in

addition in the worksheets leads necessarily to the conclusion that there is clear and convincing evidence of the intended bid, since correction of that error produces an intended bid price of \$337,320.

In support of its position, the agency relies on two decisions from our Office, both of which are readily distinguishable from the present protest, because both involved doubt about the intended bid price. Thus, in Three O Constr., S.E., B-255749, Mar. 28, 1994, 94-1 CPD ¶ 216, we found that the agency reasonably concluded that there was no clear and convincing evidence of the intended bid, because the bidder itself offered conflicting calculations of its intent (shifting from an initial claim of a labor markup of 40 percent to a 15-percent rate, neither of which was supported by the work papers). Similarly, in U.S. Gen., Inc., *supra*, there was no clear and convincing evidence of the intended bid, because the allegedly intended total did not equal the sum of the line items in the worksheets and at least one component cost rate appeared to have changed without adequate explanation. The inconsistencies in the worksheets created uncertainty precluding a determination of the intended bid.

There is no such uncertainty here. Schouten's worksheets unequivocally demonstrate both the arithmetical mistake and the amount of the intended bid. Accordingly, we find that Schouten's bid, which is low with or without correction, should be corrected to \$337,320. We therefore recommend that award be made to Schouten, if otherwise appropriate. We also find that Schouten is entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1994). Schouten should submit its certified claim for its protest costs directly to the agency within 60 working days of the receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

/s/ James F. Hinchman
for Comptroller General
of the United States

B-256710

June 6, 1994

The Honorable Federico Peña
The Secretary of Transportation

Dear Mr. Secretary:

Enclosed is a copy of our decision of today sustaining the protest of J. Schouten Construction, Inc. challenging the denial of its request for bid correction under invitation for bids (IFB) No. DTFAll-94-B-00125, issued by the Federal Aviation Administration for installation of an instrument landing system at the airport in Salt Lake City, Utah.

We sustain the protest because there is clear and convincing evidence of the arithmetical mistake alleged by Schouten and of the intended bid price. Schouten's bid remains low after correction of the mistake, and we therefore recommend that award be made to Schouten, if otherwise appropriate. We also find that Schouten is entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees.

Since the enclosed decision contains a recommendation for corrective action, we direct your attention to 31 U.S.C. § 3554(a)(1) (1988), which requires that the head of the procuring activity responsible for the solicitation report to our Office if the agency has not fully implemented our recommendations within 60 days of receipt of our decision. Please advise us, in any case, of the action taken on the recommendation.

Sincerely yours,

/s/ James F. Hinchman
for Comptroller General
of the United States

Enclosure