



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** CGM Global, Inc.  
**File:** B-258996  
**Date:** February 28, 1995

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., for the protester.  
Stephen T. Orsino, Esq., Diane D. Hayden, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency properly allowed correction of mistake in apparent low bid where the record clearly shows the existence of the mistake and of the intended bid, and the corrected bid remains below the next low bid.

## DECISION

CGM Global, Inc. protests the award of a contract to Fiorini Brothers, Inc. under invitation for bids (IFB) No. N62477-94-B-0737, issued by the Department of the Navy for pre-fabricated bus stop shelters to be installed at various locations at North Severn Village, United States Naval Station, Annapolis, Maryland. CGM contends that the Navy improperly permitted Fiorini Brothers to correct a mistake in its apparent low bid.

We deny the protest.

## BACKGROUND

The IFB, issued August 26, 1994, required bidders to submit a lump-sum price for the installation of five shelters. On September 27, the Navy issued amendment No. 0003 to the IFB, reducing the number of required shelters from five to four. The agency received four bids by the time set on September 28 for bid opening, as follows:

<u>Bidder</u>	<u>Price</u>
Fiorini Bros.	\$ 39,000
CGM Global	91,570
Sun Technical	93,600
Allied Contr.	135,340

The government's independent estimate for the project was \$59,272. Because of the disparity between Fiorini's low bid and the next low bid, the contracting officer requested that Fiorini verify its price.

On September 29, Fiorini informed the contracting officer that its bid contained a mistake. In its letter to the agency, Fiorini explained that the steel supplier on the project, Durable Steel Structures (DSS), had quoted a price of \$45,000 for the steel required for the five shelters originally called for by the IFB. The mistake occurred when Fiorini adjusted DSS's quote to reflect the requirement for four shelters. Rather than dividing DSS's quote by five to obtain the price for the steel required for one shelter ( $\$45,000 / 5 = \$9,000$ ), and multiplying the quotient by four to calculate DSS's price for the steel required for four shelters ( $\$9,000 \times 4 = \$36,000$ ), Fiorini incorrectly entered the price for the steel package for only one shelter (\$9,000) on its worksheet, and calculated its total price on that basis. On September 30, Fiorini Brothers requested an upward correction to its bid of \$35,700 to account for the mistake, for a total revised price of \$74,700.

Based on the information Fiorini provided to the agency and the firm's explanation of how the mistake occurred, the Navy concluded that Fiorini had provided clear and convincing evidence of the mistake and of its intended bid, and allowed the firm to correct its bid. On September 30, the agency awarded the contract to Fiorini at the corrected price of \$74,700. CGM filed this protest on October 17.

#### DISCUSSION

An agency may allow upward correction of a low bid before award if there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation § 14.406-3. Whether the evidence meets the clear and convincing standard is a question of fact, and our Office will not question an agency's decision based on this evidence unless it lacks a reasonable basis. States Roofing and Metal Co., Inc., B-237900, Apr. 3, 1990, 90-1 CPD ¶ 353. Worksheets may constitute clear and convincing evidence if the sheets are in good order, indicate the existence of the mistake and the intended bid price, and there is no contravening evidence. Interstate Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86; Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. Based on our review of the record, we find no basis to question the Navy's decision to allow the correction.

Fiorini's worksheets appear to be in good order and clearly show that Fiorini intended to bid on all four required bus shelters. In support of its mistake allegation, Fiorini

submitted a worksheet listing the various components of the bus shelters, and in some cases the quantity required of each. For example, the IFB's specifications required 4 "footer piers" per shelter, for a total of 16 footer piers; Fiorini's worksheet shows that it included a price for 16 footer piers. The IFB requires two benches for each shelter, for a total of eight benches; the worksheet shows that Fiorini priced eight benches. The IFB requires touch-up painting for each shelter; the worksheet shows that Fiorini priced "field painting" for four individual units.

Fiorini's worksheet shows a total of \$28,500 for the costs of materials and labor for all of those items combined. The figures on the worksheet are clear and unambiguous, and there is no indication that they were tampered with or otherwise altered. Fiorini also submitted a summary worksheet showing its standard markup for profit, overhead, and the cost of a bid guarantee, for a total of \$39,000,<sup>1</sup> its total mistaken bid price. In addition, Fiorini submitted a letter from DSS, its steel supplier, stating in relevant part:

"Per our recent conversation regarding the above referenced project, [DSS] is pleased to be accorded the opportunity to furnish the proposal below.

"Supply and erect (5) pre-engineered bus stop shelter buildings, including primary and secondary steel, 20 year 24 gauge Galvalume<sup>™</sup> standing seam roof, and 30#/80MPH loadings.

Lump Sum Total: \$45,000.00"

That letter is signed by "George P. Dausch IV President" and is dated September 23.

These documents clearly show how Fiorini calculated its price and how the mistake occurred. Moreover, Fiorini's intended bid can be readily calculated from the worksheets Fiorini submitted to the Navy. Correction of the mistake

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<sup>1</sup>The summary worksheet shows that Fiorini calculated this figure by adding 15 percent overhead to the total cost of materials and labor (\$28,500 + \$4,275 = \$32,775); adding 15 percent profit to that figure (\$32,775 + \$ 4,916 = \$37,691); and adding \$1,000 for a bond, for a total of \$38,691. The worksheet shows that Fiorini apparently rounded off each of the figures as they were calculated. For example, \$4,275 became \$4,300; \$4,916 became \$4,900; \$38,691 became \$38,700; and that figure became \$39,000, Fiorini's total initial bid price.

adds \$27,000 to Fiorini's direct labor and material costs. This figure was calculated by multiplying the costs of the steel structures for the three bus shelters Fiorini inadvertently omitted from its worksheet ( $\$9,000 \times 3 = \$27,000$ ). Adding Fiorini's rate for overhead and profit to that figure yields  $\$35,707$ ,<sup>2</sup> which Fiorini rounded off to  $\$35,700$  in its upward correction request. The total corrected bid price may thus be calculated by adding the omitted costs to the original bid price ( $\$39,000 + \$35,700$ ), to arrive at Fiorini's intended bid of  $\$74,700$ .<sup>3</sup>

Accordingly, based on our review of the record, we find that it was reasonable for the agency to conclude that Fiorini had submitted clear and convincing evidence of the mistake and of its intended bid.

The protester argues that DSS's quote of  $\$45,000$ , dated September 23, upon which Fiorini relied to support its request for correction, was produced after bid opening and after Fiorini requested permission to correct its bid price. In this connection, CGM proffered a sworn statement by Mr. John Branson, CGM's general manager and superintendent in charge of construction, in which Mr. Branson explains that as a result of several conversations with Mr. Dausch of DSS concerning the project, he concluded that DSS had not quoted the shelters to anyone before bid opening.

In response to the protester's allegation, the Navy provided our Office with a statement in which Mr. Dausch states under penalty of perjury that he provided Fiorini with a "budgetary amount" prior to bid opening, and that the September 23 letter was backdated to reflect that previous conversation. Mr. Fiorini also submitted a statement to our Office in which he again affirms under penalty of perjury that he and Mr. Dausch had discussed the project prior to bid opening, and that Mr. Dausch gave him a quote of  $\$45,000$  for the steel package for five bus shelters as initially called for by the IFB.

In this connection, on January 31, 1995, the Navy informed us that it had referred the question of whether a criminal violation may have been committed in this case to the Naval Criminal Investigative Service (NCIS) for further investigation. Based on its review and consideration of

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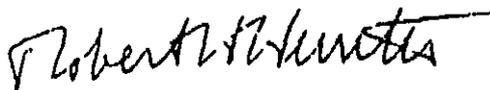
<sup>2</sup>That figure was calculated by adding Fiorini's rate for overhead (15 percent) and profit (15 percent) to the direct labor and material costs omitted from the worksheet. Thus,  $\$27,000 + \$4,050 = \$31,050$ ;  $\$31,050 + \$4,657 = \$35,707$ .

<sup>3</sup>We note that in the agency's documentation this figure was incorrectly calculated as  $\$74,399$ .

CGM's allegations, NCIS declined to pursue a criminal investigation. Also, by letter dated January 27, CGM filed a complaint with the Department of Defense's Inspector General (IG) concerning the award to Fiorini and requesting that the IG investigate the matter. We have been informed that the IG has declined to act on the matter pending our decision.

Our conclusion here is limited to a finding that it was reasonable for the agency to allow the correction. As already explained, the awardee's explanation and its worksheets independently support how the mistake occurred and Fiorini's intended bid. This finding, however, does not mean that we overlook the fact that Fiorini submitted a backdated document to the Navy in support of its request. Although NCIS did not find sufficient evidence to proceed with a criminal investigation of the matter, a contracting officer may consider Fiorini's actions in submitting a backdated document to the government as part of a responsibility determination in any future procurement in which Fiorini participates.

The protest is denied.



*for* Robert P. Murphy  
General Counsel