

DECISION



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

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FILE: B-184332

DATE: June 7, 1976

MATTER OF: ILC Steinthal, Inc.

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DIGEST:

1. Where mistake in low bid was alleged prior to award and bidder presented clear and convincing evidence of nature and existence of mistake and bid actually intended, and corrected bid does not displace any other bidder, GAO will not disturb administrative determination to allow correction since there is reasonable basis therefor even though correction significantly narrows the price differential.
2. Contention that corrected bid should be calculated on minimum hours of labor and cost of materials contemplated by other bidders is without merit as bidder alleging mistake must only prove what he intended to bid and not what is reasonable bid.

ILC Steinthal, Inc. (Steinthal), protests the award of a contract to Pioneer Recovery Systems, Inc. (Pioneer), and the modification of Pioneer's bid to supply droughe chute canopies, PN 25-5865-501, under invitation for bids (IFB) F41608-75-B-0769 issued by the United States Air Force (Air Force), Directorate of Procurement and Production, Kelly Air Force Base, Texas.

Twelve sources were solicited and the four bids received at the March 31, 1975, bid opening were \$824.64 (Pioneer), \$1,133.97 (Steinthal), \$1,188.00 (Mills Manufacturing Corp.), and \$1,970.00 (Switlik Parachute Co.). Due to the variance of the low bid with the other bids, Pioneer was requested to review and confirm its bid price. Pioneer alleged in response that a mistake in bid had been made and forwarded its cost worksheet as evidence of the alleged error. The mistake was said to have been caused by a clerical error in the placement of a decimal point in extending the total labor hours which were estimated at 42.55 hours at a labor rate of \$2.60 per hour. However, erroneous multiplication of the two resulted in total shop labor being given as \$11.06 instead of \$110.63. On the basis of the alleged mistake, Pioneer requested modification of its bid from \$824.64 each to \$1,089.70 each. Pursuant to the provisions of Armed Services Procurement Regulation (ASPR) § 2-406.3(a)(3), (1974 ed.), the Air Force made the determination that Pioneer could modify so much of its bid as was affected by the unit price error.

Steinthal, the second low bidder, acknowledges that Pioneer made a mistake in bid but argues that under the circumstances withdrawal of the bid was the only available remedy. Moreover, based on its manufacturing experience, Steinthal maintains that at least 62 hours of labor were required to make the parachutes and that the minimum cost of materials was about \$757.39. In view of the direct shop labor hours and cost of materials upon which its bid, and presumably those of the other higher bidder's were based, Steinthal questions the accuracy of Pioneer's worksheets. Accordingly, it asserts that bid correction adversely affects the integrity of the competitive bidding system since correction, as opposed to withdrawal, would substantially erase the difference between the bids.

Where a mistake in bid is alleged prior to award, it is the established position of our Office that to permit correction a bidder must submit clear and convincing evidence that: (1) an error has been made; (2) the manner in which the error occurred; and (3) the intended bid price. Similar basic requirements for permitting the correction of a bid are found in ASPR § 2-406.3(a)(3), *supra*. The authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency. Although the General Accounting Office (GAO) retains the right to review such administrative determinations, our Office will not question a factual determination permitting correction unless there is no reasonable basis for the decision. See 53 Comp. Gen. 232, 235 (1973).

The worksheets submitted as evidence of the alleged error show that Pioneer's bid for shop labor was based on a total of 42.55 hours at the rate of \$2.60 per hour. Extension of these figures results in a total of \$110.63 instead of the figure of \$11.06 upon which the bid was based. Application of Pioneer's 120 percent labor overhead (shown on the face of the worksheet) to the corrected shop labor dollar figure (\$110.63) resulted in an increase of labor and material cost from \$657.19 to \$900.58. Addition of its 10 percent G&A profit to this base results in an intended unit price of \$1,089.70 (Bid A - using military required packaging).

The Air Force also noted that Pioneer's corrected bid was not out of line with the current bids and its own bidding history on this item. On the last procurement of the item in 1973, Pioneer's bid was also lower than that submitted by Steinthal. Pioneer's bid of \$1,075.95 was

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4.9 percent lower than Steinthal's price of \$1,130.80. On this procurement Pioneer's corrected bid was determined to be 4.1 percent lower than Steinthal. Steinthal's bid increased .3 percent over its last bid whereas Pioneer's corrected bid reflected a 1-percent increase over its last bid. Under these circumstances the Air Force concluded that these figures tended to provide objective verification of the intended bid.

In view of this clear and convincing evidence as to the mistake and intended bid price, and the fact that the correction does not displace any other bidder, we are not required to object to such action. See Capay Painting Corporation, B-183546, July 1, 1975, 75-2 CPD 4. Steinthal's reliance upon 48 Comp. Gen. 748 (1969) and Treweek Construction, B-183387, April 15, 1975, 75-1 CPD 227, in support of its argument that Pioneer should have only been permitted to withdraw its bid is misplaced. In both of the referenced cases we allowed withdrawal as opposed to correction because while there was evidence of a mistake, there was not sufficient evidence to establish the exact intended bid price. The acceptable range of uncertainty obviously narrows as the prices approach each other. The fact that in both cases correction would have brought the corrected bid within a few hundred dollars was mentioned because of the uncertainty as to the intended bid price. Here the contracting officer found no such uncertainty; thus, we cannot conclude that his determination was unreasonable. Cf. Asphalt Construction, Inc., B-185498, February 9, 1976, 76-1 CPD 82.


Steinthal's contention that Pioneer's corrected bid should be calculated on the minimum hours of labor and cost of materials anticipated to be incurred by Steinthal and the other higher bidders is without merit. Where a mistake is alleged the bidder must only prove what he intended to bid on the procurement and not what is a reasonable bid. In this regard, it was stated in 53 Comp. Gen. 232, 235-36, supra, that:

"This procedure for the correction of a bid after bid opening is consonant with the statutes requiring advertising for bids and the award of contracts to the lowest responsible, responsive bidders, since these statutes are for the benefit of the United States in securing both free competition and the lowest competitive prices in its procurement activities. See B-148117, March 22, 1962. Therefore, where these procedures are strictly followed so that the integrity of the competitive bidding system is not prejudiced, the United States should have the cost benefit of the bid as corrected,

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provided that it is still lower than any other bid submitted. This procedure does not prejudice the other bidders, since correction will only be made upon a convincing showing of what the bid would have been at bid opening but for the mistake. In any case, this procedure is not for the benefit of the other bidders, but rather it is for the benefit of the United States so it can receive the procured goods or services at the lowest possible price."

Accordingly, we find no legal basis to question the administrative determination that Pioneer's bid should be corrected and, therefore, the ILC Steinthal, Inc., protest is denied.


Deputy Comptroller General
of the United States