

**DECISION**

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

**FILE:** B-216067

**DATE:** January 11, 1985

**MATTER OF:** Amtech Elevator Services

**DIGEST:**

1. Agency should have permitted correction of a mistake in bid where the bidder's worksheets provide clear and convincing evidence of both the mistake and intended bid and no other bidder is displaced.
2. Agency properly did not permit correction of error in bid where cost of work omitted from bid price was prepared after bid opening and correction would be a recalculation of bid to include factors not originally considered.
3. Where low bidder alleges two mistakes after bid opening, it is not eligible to receive award unless bidder has waived claim, which it is permitted to do under limited circumstances. Here, although bidder should have been allowed to correct one error, correction of other error was properly refused and, since bidder did not waive that error, its bid was properly not considered for award.

Amtech Elevator Services (Amtech) protests the decision of the Veterans Administration (VA) not to allow Amtech to correct two mistakes in its apparent low bid submitted in response to invitation for bids No. 542-33-84, for the removal and replacement of elevators at the VA Medical Center in Coatesville, Pennsylvania.

We deny the protest.

Amtech was the apparent low bidder with a bid of \$314,064, while Martell Construction Co. was the second low bidder with a bid of \$424,000. After bid opening, the contracting officer requested verification of Amtech's bid.

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Amtech responded by alleging two mistakes in its bid and requesting correction of these errors. One error was a mistake in the addition of its costs for materials. Amtech stated that, as evidenced by its worksheets, its addition of its material costs resulted in a total of \$141,765, but the correct addition of these figures results in a total of \$153,765, a \$12,000 increase, and this error was carried forward in tabulating its total bid. The other error was an omission of part of the required electrical work from its bid. Amtech initially stated that it had not obtained any estimates on this work but believed the work would cost as much as \$85,000. It subsequently obtained an estimate from an electrical subcontractor and submitted a price of \$23,861, plus the cost of wire required to be compatible with the pump motor specified, for the omitted work. Amtech attributed its two errors to the fact that it received the bid documents only 5 working days before bid opening.

The VA found clear and convincing evidence of the omission of the electrical work, but since Amtech did not price the electrical work prior to bid opening and based its requested correction on a post-bid opening estimate, the agency found there was no clear and convincing evidence of Amtech's intended bid. Consequently, the VA informed Amtech that Amtech could withdraw its bid, but not correct it. The VA did not make any specific determination with regard to the alleged mistake in addition.

Amtech protests the agency's refusal to permit an upward correction of its bid, stressing the extenuating circumstances surrounding its bid. It states that it called the contracting personnel several times concerning the whereabouts of its bid package and was told that its copy had been mailed. Amtech still had not received the documents when it picked up another set from the agency on May 29. Bid opening was June 6. Amtech suggests that its errors were due to an inadequate amount of time to prepare its bid for this project. In its protest, Amtech revised its mistake in addition to be \$17,111 and set the cost of its omission of the electrical work at \$23,861, thus giving it a total bid price of \$355,036. Amtech also offered to accept award of this contract on the basis of its initial bid with the understanding that correction of these mistakes would be pursued after award.

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A bidder which seeks correction of an error in its bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended bid price. 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 the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. Harry Curley & Sons, B-213749, Feb. 28, 1984, 84-1 C.P.D. ¶ 249.

Where, as here, correction would not displace another bidder, the existence of the error and the bid actually intended may be established from the bid, the bidder's worksheets and other evidence submitted. Our Office has found worksheets in themselves to be clear and convincing evidence if they are in good order and indicate the intended bid price, so long as there is no contravening evidence. Republic Steel Corporation; Centex Construction Company, Inc., B-203379, B-203779.2, Sept. 20, 1982, 82-2 C.P.D. ¶ 235.

We initially note that the VA should have considered both of the errors claimed by Amtech rather than ruling solely on the omission and ignoring the mistake in addition. See Bruce-Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 C.P.D. ¶ 310; Gichner Mobile Systems, B-189996, Jan. 30, 1978, 78-1 C.P.D. ¶ 73.

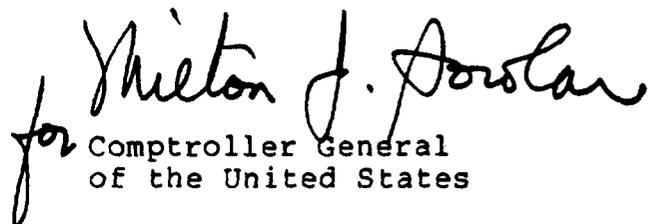
With regard to the mistake in addition, our review of the worksheets submitted by Amtech indicates there is clear and convincing evidence of the mistake, how it was made, and the intended bid. The figures on Amtech's worksheet for basic elevator equipment show that Amtech added these figures to equal \$141,765, whereas the correct addition of these figures equals \$154,765. Amtech determined its overhead and profit for equipment on the basis of the incorrect equipment cost. These figures were then totaled and carried forward to calculate Amtech's total bid price. The worksheets establish the formula for determining profit and overhead as cost multiplied by 43 percent. The profit and overhead for the \$12,000 error therefore amounts to

\$5,160. Thus, the actual error due to this mistake in addition was \$17,160. All of Amtech's worksheets appear to be in good order. Consequently, we believe there was a reasonable basis to permit correction of this error.

However, the rule permitting bid correction upon the establishment of evidence of the mistake and the intended bid does not extend to situations where the bidder discovered the omitted factors after the bid was submitted and opened. A bidder cannot recalculate and change its bid to include factors which the bidder did not have in mind when the bid was submitted. General Elevator Company, Inc., 57 Comp. Gen. 257 (1978), 78-1 C.P.D. ¶ 81; Columbus Building and Supply Co., B-188477, Aug. 2, 1977, 77-2 C.P.D. ¶ 70. Amtech by its own admission discovered the omitted electrical work after its bid was submitted and opened. Therefore, the VA properly decided not to allow correction of this error despite the alleged extenuating circumstances.

Finally, Amtech requests that it be awarded this contract notwithstanding its mistakes. Where the low bidder alleges mistakes after bid opening, we have allowed award only where the apparent low bidder requests waiver of its mistakes and it is clear that the intended bid would have been the lowest even though the amount of the intended bid could not be clearly proven for the purpose of bid correction. DSG Corporation, B-210818.3, B-213173, Apr. 25, 1984, 84-1 C.P.D. ¶ 476; Bruce-Andersen Co., Inc., *supra*; Regis Milk Company, B-180930, June 17, 1974, 74-1 C.P.D. ¶ 328. Amtech, however, has conditioned its acceptance of award on the reservation of its right to pursue correction of the mistakes after award. We conclude that although correction of the mistake in addition should have been permitted, correction of the error of omission was properly refused and, since Amtech did not waive that error, the VA properly did not consider Amtech's bid for award.

The protest is denied.

*for*   
Comptroller General  
of the United States