

DECISION

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

094-761 40989

FILE: B-181140

DATE: July 30, 1974

MATTER OF: Hughes & Smith, Inc.

[Protest Against Bid Correction Allowance] ^{DL}

DIGEST: Although GAO has right of review, bid correction after bid opening but prior to award is question of fact to be made by administratively designated evaluator of evidence, and where there is clear and convincing evidence that error occurred, how it occurred, and intended bid price, a decision to allow correction will not be disturbed by GAO.

On January 11, 1974, invitation for bids (IFB) DAHC30-74-B-0054 was issued by the MDW Procurement Division (MDW), Cameron Station, Alexandria, Virginia, for the renovation of Cameron Station Officers' Open Mess. At 10:00 a.m., on February 15, 1974, the following bids were opened:

Suburban Contractors	\$113,343
Rescom Inc.	94,500
Hughes & Smith	92,845
Sterling Equip.	NO BID
Mechaneer Inc.	137,165
Douglas K. Tracy	71,171
S & J Assoc.	162,205

The Government estimate for the work was \$90,342. Subsequent to bid opening, Douglas K. Tracy (Tracy) submitted a request, by letter dated February 15, 1974, to the contracting officer to modify its bid due to mathematical error. In support of its request, Tracy submitted a copy of its original bid summary sheets. Tracy maintained that the total sum of the numbers contained in the lower right-hand corner of its worksheet is \$73,858, rather than the \$63,858 shown, and that the addition of 10 percent profit and 2 percent insurance bond to the corrected total results in a bid price of \$82,867.

Pursuant to Armed Services Procurement Regulation (ASPR) 2-406.3(e)(3), the matter was referred to higher authority

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for a determination as to whether Tracy should be permitted to correct its bid pursuant to ASPR 2-406.3(a)(3). The Assistant Secretary of the Army (I&L), Headquarters, found that the evidence submitted clearly and convincingly established both the existence of a mistake and the bid actually intended. Furthermore, he found that the bid, as uncorrected and as corrected, was the lowest received. Accordingly, he permitted correction of Tracy's bid.

On March 13, 1974, award was made to Tracy in the corrected amount of \$82,867.

Subsequent to the denial of its protest by the procuring activity, Hughes & Smith, Inc. (H&S), protested to our Office the award of the above-referenced contract to Tracy. H&S questions whether Tracy has proved error by means of clear and convincing evidence and contends that it has not been furnished with such evidence as requested from MDW. In addition, H&S questions how Tracy could have made such a gross error and expresses doubt as to the authenticity and credibility of the worksheet submitted. Furthermore, H&S contends that Tracy requested permission to withdraw or correct its bid rather than to merely correct it, as stated by MDW.

ASPR 2-406.3(a)(3) provides as follows:

"(3) Where the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made."

Although the General Accounting Office (GAO) has retained the right of review, the authority to correct mistakes alleged

after bid opening but prior to award is vested in the procuring activity and the weight to be given evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. 53 Comp. Gen. 232 (1973); 51 Comp. Gen. 1 (1971).

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 bidder, 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, 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.

The principles supporting this procedure have been sanctioned by our Office and the Court of Claims. 51 Comp. Gen. 1 (1971); Chris Berg, Inc. v. United States, 192 Ct. Cl. 176, 426 F. 2d 314 (1970).

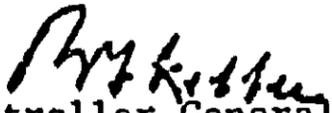
We have reviewed the evidence relied upon in permitting correction and cannot conclude that there was no reasonable basis for the administrative determination that an error was made and that the worksheet submitted was genuine and constituted clear and convincing evidence of the error and the intended bid.

With regard to H&S' final contention, it should be noted that although Tracy's letter of February 15 stated "we must withdraw and/or modify," Tracy requested to modify rather than withdraw its bid. Tracy was instructed by the procuring activity to delete the word "withdraw" in its February 15 letter and initial this deletion, which Tracy did on February 19. Consequently, MDW's statement that

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Tracy requested permission to correct, rather than to withdraw or correct its bid is accurate. MDW's action in this regard was in keeping with the mandate of ASPR 2-406.3(a)(2) which permits a determination for correction only where evidence of error is clear and convincing both as to the existence of the mistake and as to the bid actually intended.

For the reasons stated above, the protest of S&W is denied.


Deputy Comptroller General
of the United States