



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gulfstates Industries, Inc.

File: B-277173.2

Date: October 15, 1997

K. C. Tsambis for the protester.

Charles D. Raymond, Esq., Harry L. Sheinfeld, Esq., and Gary E. Bernstecker, Esq.,
Department of Labor, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly allowed correction of a mistake in the awardee's low bid where the awardee presented clear and convincing evidence of the existence of the mistake and of the intended bid price, within a narrow range of uncertainty, and the bid remained low.

DECISION

Gulfstates Industries, Inc. protests the award of a firm, fixed-price contract to THL Enterprises, Inc. by the Department of Labor under invitation for bids (IFB) No. 97-DAA-16-JC for the removal and replacement of specified roof systems and damaged decking and certain associated repairs at the Jacksonville Job Corps Center. The protester contends that the agency improperly permitted THL to correct a mistake in its apparent low bid.

We deny the protest.

Of the seven bids received at the January 28, 1997, bid opening, THL's bid of \$195,000 was apparently low, and the Gulfstates bid of \$356,860 was third low. The second low bidder was allowed to withdraw its bid based on a mistake. The government estimate for the project, as stated in the IFB, was \$250,000 to \$500,000.

Because THL's bid was substantially lower than the government estimate and the other bids, the project architect requested, on January 29, that THL verify its bid. In response, by letter of the same date, THL stated that it had made a clerical mistake in its bid, and that its intended bid was \$295,000. By letter to the agency of January 30, THL requested correction of its bid to \$295,000 and enclosed a cost breakdown to demonstrate the clerical error and bond documents to support the intended \$295,000 bid. THL's cost breakdown indicated a total cost of \$290,439.82, without any entry for profit, and the enclosed power of attorney for the bid bond

states that the bond for 20 percent of the bid, not to exceed \$59,000, was based on a contract amount "estimated at \$295,000." On the basis of that documentation, the agency determined that THL had, in fact, made a correctable clerical error and allowed bid correction to \$295,000 before awarding THL the contract on May 22, 1997.

On May 23, Gulfstates filed a protest with the agency objecting to this determination. The agency denied the protest by letter dated June 24 and Gulfstates subsequently filed this protest with our Office on July 7.

An agency may allow upward correction of a low bid before award where there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.407-3(a). Whether the evidence meets this 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. Maple Constr. Co., Inc., B-270073, Feb. 6, 1996, 96-1 CPD ¶ 43 at 2. Work papers, including computer generated spreadsheets, may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. The exact amount of the intended bid need not be established, provided that there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Id.

The thrust of the protester's comments on the agency report is that it objects to any post bid opening correction as unfair because it is not possible that "any evidence [can] be clear and convincing after the bids are open." However, as noted above, the FAR permits correction after bid opening and before award if there is clear and convincing evidence of the mistake and of the intended bid; further, FAR § 14.407-3(g)(2) provides that in determining whether there is such evidence, the contracting officer should obtain from the bidder and consider statements and all pertinent evidence such as worksheets and any other evidence that establishes the existence of the error and the bid actually intended. The protester's objection simply fails to recognize the propriety of the method established by the FAR to permit bid correction.

Here, in support of THL's claim that it made a clerical error of entering \$195,000 rather than the intended \$295,000 as its price entry, THL submitted computer generated cost breakdown spreadsheets, which appear to be in good order, showing that THL's calculated costs total \$290,439.82. THL's 20-percent bid bond in the amount of \$59,000 is based on an estimated bid of \$295,000 and provides evidence of both the existence of a mistake and that the intended bid was \$295,000. The agency determined that this material provided a reasonable basis to permit THL to correct its bid price, since there was clear and convincing evidence establishing both the existence of the mistake and the intended bid. In our view, the cost spreadsheets coupled with the \$59,000 bid bond and the associated power of

attorney indicating an estimated bid of \$295,000, provide clear and convincing evidence of the existence of a mistake and that the intended bid falls within \$290,439.82 and \$295,000, a narrow range of uncertainty in which THL's bid remain low. Cf. McInnis Bros. Constr., Inc., B-251138, Mar. 1, 1993, 93-1 CPD ¶ 186 at 5-7 (considering spreadsheets in reviewing propriety of correction); Clear Maintenance Corp., B-207607, Aug. 23, 1982, 82-2 CPD ¶ 167 at 3 (bid bond may be considered in ascertaining intended bid). Under these circumstances, the agency's decision to permit THL to correct its bid was reasonable.

The protest is denied.

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of the United States