



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pueblo Enterprises, Inc.

File: B-278279

Date: January 14, 1998

Theodore M. Bailey, Esq., for the protester.

George N. Brezna, Esq., and Vicki E. O'Keefe, Esq., Naval Facilities Engineering Command, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably denied the protester's request to correct its bid where the protester's claim of a mistake was based on workpapers that the agency reasonably found not to be in good order because they did not show the intended bid.

DECISION

Pueblo Enterprises, Inc. protests the Department of the Navy's decision to deny its request to correct mistakes in its bid under invitation for bids (IFB) No. N62766-97-B-2723, issued by the Naval Facilities Engineering Command, Marianas, Guam, for furnishing and installing replacement doors and windows on 275 housing units.

We deny the protest.

The IFB requested a fixed price for the project work, a fixed price for the bonds for the project, and a total price. Among the specifications describing the work were a requirement that the empty spaces in the walls next to certain doors and windows be filled with concrete,¹ and a requirement for certain aluminum embossed panel doors. Two amendments to the IFB were issued. Amendment No. 0002, among other things, changed the bid opening date to August 5 and specified that the embossed panel doors could be either steel or aluminum.

¹These spaces are referred to as concrete infills.

Seventeen bids were submitted. The low bids were as follows:

<u>BIDDER</u>	<u>TOTAL PRICE</u>
South Gulf, Inc.	\$2,992,000
Pueblo	\$3,247,668
Speegle Construction Company	\$3,731,000
Reliable Builders, Inc.	\$3,734,000
Black Construction Corporation	\$3,868,000
Kim Brothers Construction Corporation	\$3,960,000

The other bids ranged up to \$4,852,357. The government estimate for the project was \$4,598,897. Pueblo submitted an initial bid in the amount of \$3,096,876 (\$3,075,000 base bid plus \$21,876 bond price) and a facsimile modification adding \$150,792 (\$150,000 plus \$792 bond price) to this original bid.

South Gulf's low bid was rejected due to an uncorrectable mistake in bid. Meanwhile, the Navy requested Pueblo to verify its bid since it was significantly below the government estimate and the other bids. Initially, Pueblo verified its bid, but following the agency's request for a detailed written breakdown of costs, Pueblo claimed that it had made certain mistakes in its bid price and requested an upward correction in the amount of \$160,659.83.

In support of its request, Pueblo furnished original hand-written undated worksheets that it claimed it had utilized to formulate its price and an affidavit by the bid preparer explaining the mistakes. The 17 submitted worksheets consisted of (1) a takeoff sheet for the installation of each type of door and window (14 worksheets), (2) a worksheet totaling the results from these 14 worksheets, (3) a worksheet showing how the original base bid of \$3,075,000 was calculated (one element of cost on this worksheet is the total from worksheet (2) mentioned above), and (4) a worksheet showing a revised base bid of \$3,281,141 based on adjustments made after the preparation of the \$3,075,000 base bid. The affidavit certifies that all of these worksheets were prepared prior to bid opening. Pueblo's total claim of \$160,659.83 includes its standard markup and bond costs that are stated on its summary worksheets.

Pueblo explained that the first mistake was on the takeoff sheet calculating the labor and material costs for installing "D1" and "D2" (french) doors. Pueblo advised that the quantity of these doors (532) was multiplied by \$365 instead of \$575, which accounted for an error in the amount of \$111,720. The worksheets reasonably support a conclusion that this particular error was made.

Pueblo explained that the second mistake occurred when it attempted to add an additional \$37 in material and labor costs to its costs for doing the concrete infills around certain doors and windows. Pueblo explained that after preparing the original takeoff sheets, but prior to bid opening, it discovered that it had neglected to add certain additional costs required to construct the second concrete infill around the D1 and D2 doors, and those same additional costs for concrete infills around various window types. As evidence of this mistake, Pueblo references certain marks at the top of applicable takeoff sheets in a different color of ink stating "Concrete 2 Block +37" or "Concrete +37." Pueblo advises that, as evidenced on the revised bid worksheet, it erroneously calculated the number of infills, to which this \$37 cost adjustment was to be applied, as 805, when the correct number of infills was 1,395 (calculated in the bid preparer's affidavit), so that \$21,460 (580 x \$37) was omitted from its intended bid.

The Navy denied Pueblo's request for correction because Pueblo did not provide clear and convincing evidence of the existence of the second claimed mistake or the intended total bid, although there was evidence that Pueblo had made a mathematical error in calculating its D1/D2 installation costs. The agency found that the workpapers were undated, contained various, sometimes unexplained, calculations, and were not in good order. The agency particularly noted that the total on the revised base bid worksheet showing a base bid of \$3,281,141 did not match up to the actually submitted base bid of \$3,225,000, so there was no clear and convincing evidence of the intended bid.

Pueblo protests that the Navy unreasonably denied its request for bid correction because its worksheets and supporting affidavit constituted clear and convincing evidence of both the mistakes and the intended bid. With its comments on the agency report on the protest, Pueblo submitted another undated hand-written worksheet showing how it calculated its base bid of \$3,225,000. Pueblo explains that this worksheet considered the effect of the agency's relaxation of specifications regarding the embossed panel doors, which this worksheet, after some calculations, estimates at "say deduct \$50,000." According to the protester (although the worksheet does not evidence this), the \$3,281,141 base bid, as calculated on the above-mentioned revised base bid worksheet, was rounded down to \$3,275,000. The worksheet then deducts the previously calculated \$50,000 from \$3,275,000 to show the intended base bid of \$3,225,000, and the difference between this figure and the "hard bid" of \$3,075,000 is calculated at \$150,000--the amount shown on the bid modification.

In order to protect the competitive bid system from abuse, the Federal Acquisition Regulation (FAR) imposes a high standard of proof--clear and convincing evidence--upon bidders seeking upward correction of their bids after bid opening but before award. The bidder must submit clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended price. FAR § 14.407-3(a). 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. CRK-JVC/Shockley Joint Venture, B-265937, Jan. 17, 1996, 96-1 CPD ¶ 85 at 5. Workpapers may constitute part of that clear and convincing evidence, if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id. An agency may not permit the correction of a mistake asserted after bid opening, but before award, if the bidder's evidence fails to meet the high standard of proof established by FAR § 14.407-3(a), notwithstanding the good faith of the parties. Furthermore, because the contracting agency is vested with authority to correct mistakes, and because the weight to be given evidence in support of a mistake is a question of fact, we will not disturb an agency's decision concerning bid correction unless there was no reasonable basis for the decision. Id.

We find that the agency had a reasonable basis for denying Pueblo's request for bid correction. The workpapers that Pueblo furnished to explain the mistakes in its bid and the intended bid were not in good order, and did not demonstrate with clear and convincing evidence either the second claimed error or the intended bid price.

Specifically, the significance of the notations referencing "Concrete +37" on the tops of some of the takeoff sheets has not been convincingly traced to a miscalculation of additional costs for infills. While the protester now asserts how many infills were encompassed by the \$37 figure, this amount is not apparent from the worksheets (but is only calculated in an affidavit supporting the claim). This particular error was not one of mere arithmetic, but may have reflected a judgmental pricing decision by Pueblo in calculating its bid price. Id. at 6-7.

In addition, and of even greater significance is the fact that no worksheets provided to the agency in support of the mistake claim matched Pueblo's bid price. Moreover, the changes in prices from the initial base bid worksheet and the revised base bid worksheet were not explained and are not otherwise apparent. We find that the agency could not reasonably have determined Pueblo's intended bid price based on the worksheets that Pueblo provided to the agency.

Pueblo advises that the worksheet showing how it calculated its bid modification, which was first submitted with its report comments, was not previously submitted to the agency or our Office because it did not relate to the mistakes claimed by Pueblo. We disagree, since this worksheet purports to be the ultimate documentation for Pueblo's final bid on the IFB. While Pueblo may have believed this document was irrelevant to the actual mistakes, FAR § 14.407-3(g)(2) provides that a request for correction of a claimed mistake in bid "shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid . . . and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually

intended." Here, Pueblo failed to provide a critical element, namely worksheets showing "the bid actually intended." In the absence of such worksheets, the Navy had a reasonable basis for finding that Pueblo had not presented the requisite clear and convincing evidence to warrant correction of its bid.²

The protest is denied.

Comptroller General
of the United States

²The protester's submission of the additional undated worksheet in its comments to our Office is largely irrelevant to the question before us, which is whether the agency's denial of the request for bid correction had a reasonable basis in the record before the agency at the time. Moreover, such a tardy production of a critical document also raises credibility concerns as well as doubts about the good order of the workpapers.