



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Holmes Mechanical, Inc.

File: B-281417

Date: January 13, 1999

Timothy A. Sullivan, Esq., Starfield & Payne, for the protester.
Jeffrey M. Denson, Esq., Lis Young, Esq., and George N. Brezna, Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency acted reasonably in permitting the upward correction of the low bid where the worksheets submitted by the low bidder, which included computer spreadsheets, contained clear and convincing evidence of the mistake and the bid intended.

DECISION

Holmes Mechanical, Inc. protests the award of a contract to Nordic Construction, Inc. under invitation for bids (IFB) No. N44255-96-B-1007, issued by the Department of the Navy for the replacement of fresh water piping at the Puget Sound Naval Shipyard in Bremerton, Washington. Holmes contends that Nordic was improperly permitted to correct a mistake in its apparent low bid.

We deny the protest.

The IFB required a bidder to submit a lump-sum price for the work required, and to separately indicate the cost included in the price for bid, performance and payment bonds. The IFB added that the estimated cost range for the project was \$250,000 to \$500,000. IFB, Standard Form 1442, at 1-2.

The agency received seven bids by the September 1, 1998 bid opening date. Nordic's bid of \$211,040 was low, and Holmes's bid of \$314,580 was next low. The other bids ranged in price from \$320,673 to \$698,300. The government estimate was \$264,424.

By letter dated September 2, the contracting officer requested that Nordic verify its bid because of the disparity between Nordic's bid and the government estimate and the other bids. Agency Report, Tab 6, Agency Oct. 14 Memorandum at 1. Nordic

responded by explaining that it had mistakenly omitted the \$71,852.55 in equipment costs associated with its bid, plus Nordic's standard mark-ups. Agency Report, Tab 5, Letter from Nordic to the agency at 1 (Sept. 9, 1998). Nordic explained that it used a computer spreadsheet program, which included separate columns for subcontractor, materials, labor, and equipment costs, to prepare the bid. According to Nordic, when the program calculated the total of the four columns, it failed to include the total costs set forth under the equipment column. In support of this explanation, Nordic submitted a printed copy of the spreadsheet with the error and as corrected, as well as a copy of the spreadsheet on computer diskette.¹ Nordic also submitted other bid worksheets, including, for example, the price quote it received for materials. Nordic added that there was a second mistake in its bid, pointing out that it had erroneously entered as the lump-sum bid price its bid amount without the costs for its bonds, thus understating the lump-sum price by \$3,102 in bond costs.

After reviewing Nordic's worksheets, the agency concluded that there was clear and convincing evidence with regard to both of the mistakes claimed by Nordic, and therefore the correction of its bid was warranted. The agency made award to Nordic at its corrected bid price of \$302,362.

Holmes protests that the agency did not have adequate evidence to permit the correction of Nordic's bid. Holmes points out that, according to the worksheets, Nordic based its bid price on supplying equipment for the project for a different number of weeks than it allotted for its on-site supervision of the project; as calculated by the protester, this "inconsistency" would add an additional "\$680.00 plus markups to the bid" if corrected. Comments at 3. Holmes concludes that there consequently is "a serious question regarding the nature of the mistake and the intended bid." Id. Holmes also contends that the computer spreadsheets submitted by Nordic should not have been considered by the agency because "it is possible with computer programs and spreadsheets to adjust the formula and data after bid opening." Id.

An agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation § 14.407-3(a); Hampton Roads Mechanical Contractors, Inc., B-257908, Nov. 23, 1994, 94-2 CPD ¶ 201 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. Gulfstates Indus., Inc., B-277173.2, Oct. 15, 1997, 97-2 CPD ¶ 103 at 2.

¹According to Nordic, the spreadsheet copy was printed in response to the agency's query regarding Nordic's bid price. Nordic stated that it had not printed a copy prior to bid opening. Agency Report, Tab 5, Letter from Nordic to the agency at 1 (Sept. 9, 1998).

Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. Hampton Roads Mechanical Contractors, Inc., *supra*, at 3.

The protester's argument concerning the inconsistency between the number of weeks Nordic allotted for the supply of equipment for the project and its on-site supervision of the project is based upon its review of Nordic's internal documents; these documents were provided to the protester's counsel under a protective order issued by our Office in connection with the protest. We have previously held that, in reviewing whether an agency acted properly in permitting the upward correction of a bid, it is not appropriate to question the precise methodology by which a bidder undertakes to calculate its bid. Schoutten Constr. Co., B-215663, Sept. 18, 1984, 84-2 CPD ¶ 318 at 3. Rather, our concern is whether the worksheets provide a reasonable basis for the agency's conclusion that there was clear and convincing evidence of the mistake and the intended bid, and here, as discussed below, there was such evidence.²

The agency explains that, in reviewing the worksheets submitted by Nordic, it determined that they were in good order and that the documentation "clearly shows how the errors occurred." Agency Report, Tab 6, Agency Oct. 14 Memorandum at 2. The agency points out that the uncorrected computer spreadsheets show the formula used to calculate Nordic's bid, including where the listed equipment costs should have been included in the bid total. The agency explains with regard to Nordic's mistake concerning the failure to include bond costs in the total bid price that based upon the worksheets it was "readily apparent that Nordic misunderstood how its bid price was to be listed," and adds that the amount of Nordic's intended bid could be determined. *Id.* Based upon our review of the record, including Nordic's bid and worksheets and the documentation generated by the agency while it was considering Nordic's bid, we see no basis on which to challenge the agency's decision to permit the upward correction of Nordic's bid.

Moreover, the correction of a bid may be allowed even where the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Precon Constr. Co., B-255294, B-255294.2, Apr. 6, 1994, 94-1 CPD ¶ 239 at 5. Even accepting the protester's view that Nordic's bid worksheets reflect an inconsistency between the number of weeks allotted for the supply of equipment and on-site supervision, correction of the bid to resolve the issue would add only approximately \$680, as calculated by the protester, to the total. This

²Nordic's ability to perform all aspects of the job properly has not been challenged by the protester and, in any event, is a matter that our Office generally does not review. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (1998).

amount is insignificant given that Nordic's bid, as corrected, would still be more than \$11,000, or in excess of 3 percent, lower than the protester's next low bid.

With regard to the propriety of the agency's consideration of Nordic's computer spreadsheets, our Office has previously determined that the fact that bid worksheets were generated by a computer does not preclude them from constituting valid evidence to support a request for bid correction. See J.L. Malone & Assocs., Inc.; Helix Elec., Inc., B-261353, B-261353.2, Sept. 18, 1995, 95-2 CPD ¶ 136 at 4 n.3. The key consideration, as explained above, is whether or not the submissions are clear and convincing of the mistake and intended bid; the manipulation of the mistake in bid rules may occur just as easily when a bidder has prepared its worksheets without the use of a computer. Id.

The protest is denied.

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