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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Roy Anderson Corporation

File: B-292555; B-292555.2

Date: October 10, 2003

William R. Purdy, Esq., Purdy & Germany, for the protester.
Paul H. Sanderford, Esq., Pratt & Sanderford, for Emerson Construction Company, Inc., an intervenor.
Joel R. Trautman, Esq., and William M. Brown, Esq., U.S. Army Corps of Engineers, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where workpapers contain clear and convincing evidence that the low bidder mistakenly omitted an element of cost from its bid, the contracting agency properly permitted upward correction of the bid; even where the exact amount of the intended bid is not certain, determination to allow correction is reasonable where intended bid falls within a narrow range of uncertainty and would remain low after correction.

DECISION

Roy Anderson Corporation protests the award of a contract to Emerson Construction Company, Inc. under invitation for bids (IFB) No. DACA63-03-B-0001, issued by the U.S. Army Corps of Engineers for construction of barracks at Fort Hood, Texas. Roy Anderson contends that the agency improperly permitted Emerson to correct an alleged mistake in its bid.

We deny the protest.

The IFB was issued on April 28, 2003, and bid opening was held on June 12. Emerson submitted the apparent low bid of \$35,574,639.50. Roy Anderson's next low bid was \$40,570,831. The government estimate for the project was \$40,383,671. Emerson was asked to verify its bid, since it was substantially lower than the other bids received and the government estimate. Upon review of its bid and workpapers, Emerson discovered an error in the calculation of its subtotal price on a

computerized spreadsheet; that incorrect subtotal price then served as the basis for certain price adjustments including bond and insurance costs, and fee. Emerson reported that it failed to include in its subtotal calculation the last in the series of item prices that were to constitute the subtotal price. Specifically, the subtotal price was to be recorded at cell number D160 of Emerson's computerized worksheet and was supposed to include cell numbers D16 through D159. Emerson explained that one price (at cell number D159 covering certain electrical work) in the amount of \$3,702,025 was mistakenly omitted from its subtotal calculation because, according to Emerson, it mistakenly keyed in cell number D158, rather than cell number D159, as the last item to be added. Emerson stated that, due to the omission of the electrical work item price at cell number D159, and its effect on the mark-up adjustments, its bid was mistakenly understated in the amount of \$3,923,700. Emerson claimed that an upward correction of its bid for this amount was warranted and that its intended total bid price was \$39,498,340.

The agency reviewed Emerson's workpapers and computerized bid documents and confirmed that, although the claimed amount of \$3,702,025 was specifically listed in the firm's spreadsheet for the electrical work at cell number D159, and should have been included in the spreadsheet's subtotal price at cell number D160, the computerized spreadsheet's subtotal formula mistakenly only called for the addition of cell numbers D16 through D158. The price listed at cell number D159, the last cell in the series to be added, therefore was not included in the firm's spreadsheet calculation of the cell number D160 subtotal price. The agency concluded that Emerson had clearly and convincingly showed the basis of its mistake, and that its intended subtotal calculation and total bid price were to include the cell number D159 price. The agency also confirmed that the firm's associated mark-up pricing followed the same methodology it had used for its original bid. The agency consequently permitted Emerson to upwardly correct its total bid price to the claimed intended bid amount of \$39,498,340. An award was made to the firm at that amount. This protest followed.

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). For upward correction of a low bid, workpapers, including records of computer-generated software 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. Alpha Constr. & Eng'g. Inc., B-261493, Oct. 5, 1995, 95-2 CPD ¶ 166 at 3; McInnis Bros. Constr., Inc., B-251138, Mar. 1, 1993, 93-1 CPD ¶ 186 at 5. In addition, where the mistake has a calculable effect on the bid price and that effect can be determined by a formula evident from the bidder's workpapers, the overall intended bid may be ascertained by taking into account the effects of the error on other bid calculations based on the mistaken entry. Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571 at 3. Moreover, correction may be allowed, even where the intended bid price cannot be determined exactly, provided 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. McInnis Bros. Constr., Inc., supra. Our Office treats the question of whether the evidence of the intended bid meets the clear and convincing standard as a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Id.

We find that the agency reasonably determined that Emerson's evidence of its claimed bid mistake and intended bid price was sufficient to meet this standard and permit correction of the bid. Our review of the record, including Emerson's computer-generated spreadsheets, confirms that the price at spreadsheet cell number D159 (for electrical work) was not included in the subtotal at cell number D160. Based on the format of the spreadsheet, it is clear that the \$3,702,025 price at cell number D159 was intended to be included in the firm's subtotal price. The record is also clear that the subtotal price was to serve as the firm's base price for application of its mark-up price adjustments for certain costs such as bonds, insurance, and fee; the amount of the mark-ups then was to be based on the firm's standard rates for similar sized contracts for the same kind of work.

Roy Anderson does not dispute the validity of the basic factual elements on which the agency relied to allow correction of Emerson's bid. Instead, Roy Anderson points to other factors that, in its view, cast doubt on the mistake claim. These allegations, which are at best tangentially related to the evidence offered to support the mistake claim, provide no basis for us to question the agency's decision to allow correction of Emerson's claimed mistake in its bid.

For example, Roy Anderson questions Emerson's explanation of precisely how it keyed in the command to add the prices in cell numbers D16 to D158 and show the sum in cell number D160 when preparing its spreadsheet. Specifically, Roy Anderson claims that Emerson's explanation--that it keyed in the command "FX=Sum"--is inaccurate and that in fact the proper command is "=Sum." Regardless of how the command was entered, the matter for review is whether the record supports Emerson's claimed omission of the price in cell number D159. Roy Anderson's argument regarding the command used by Emerson in preparing its spreadsheet simply does not bear on that issue.

Roy Anderson also argues that correction should not have been permitted because the claimed corrected mark-ups were not convincingly demonstrated. In this regard, the protester argues that because the mark-up percentage on the original bid was slightly higher than Emerson applied in its corrected bid, the initial higher rate should apply. The protester further suggests that because this would result in a corrected overall bid price higher than that which had been claimed by the awardee, Emerson has not demonstrated the exact amount of its intended bid. Roy Anderson's argument in this regard is unpersuasive. As explained by Emerson and the agency, Emerson's original and corrected bid mark-ups were based on a chart of direct costs used by the firm for similar construction contracts; that chart does not follow a set percentage basis for the mark-up, but rather sets out specific dollar amounts to be added to the firm's bid depending on the firm's price for the work.

Further, as the protester concedes, even if it was correct and the slightly higher mark-up rate evident in Emerson's original bid was applied to the corrected subtotal price, Emerson's bid clearly would still remain low. Such calculation would, in fact, confirm Emerson's intended bid price within only a narrow range of uncertainty—a range spanning, according to the protester's calculations, approximately \$86,000, a minimal amount compared to the overall bid price. The protester's suggestion that Emerson must demonstrate its exact intended bid price is misplaced; as stated above, correction may be allowed where the amount of the intended bid falls clearly within a narrow range of uncertainty and would remain low after correction. See id.

In its comments on the agency report, the protester raises a supplemental protest contention. According to the protester, Emerson's workpapers reveal at least one material unclaimed mistake that the protester argues should be considered by our Office to conclude that Emerson's bid is not low. The alleged error involves a different cell number (D157) of the awardee's computerized spreadsheet concerning different electrical work. The protester notes that some of the digits of that cell's price are the same as some of the digits in one of Emerson's electrical subcontractors' quotes for the work (the same subcontractor whose quote was offered by Emerson as the basis of its omitted cell number D159 price discussed above), but that Emerson's spreadsheet shows a price approximately \$2 million less than that particular subcontractor quote; the protester asserts that the lower Emerson spreadsheet price must be in error.

The agency argues that the protester's supplemental challenge to this spreadsheet item price is merely speculative, as only the protester suggests that the amount should be questioned; neither the awardee nor the agency have claimed any mistake in that area of the bid or workpapers. On the contrary, the agency reports that the Emerson item price questioned by Roy Anderson is actually in line with other bidders' prices for the work, and is, in fact, substantially higher than Roy Anderson's price for the work, so that the agency had no concern about the item price or the fact that it was lower than Emerson's subcontractor quotes for the item.

As a general matter, we will not review alleged mistakes asserted by a protester that, as here, are not raised by the low bidder or agency and are unrelated to the agency's review of the initially claimed mistake. See Construction Tech. Group, Inc., B-283857, Jan. 18, 2000, 2000 CPD ¶ 15 at 4; McInnis Bros. Constr., Inc., supra, at 6, n. 8. We see no reason to depart from that standard here. In support of its decision that we should review the alleged mistake that it now raises, Roy Anderson relies on our decision in Transco Indus., Inc., B-260286, June 8, 1995, 95-1 CPD ¶ 15. That case is clearly distinguishable from the case at hand. In Transco, our Office discovered an additional mistake in the awardee's bid which, when corrected, made the awardee's bid no longer low. The mistake involved an obvious arithmetic miscalculation (a simple multiplication error) and related to the area of work of the claimed mistake. In contrast, Roy Anderson's allegation of error here—based on a price for other electrical work in the awardee's workpapers that shares some digits with, but is substantially lower than, one of the subcontractor quotes it received for

the work--is not the type of obvious arithmetic error we discovered in Transco, and does not relate directly to the electrical work for which the error is claimed. Under these circumstances, we see no basis to review Roy Anderson's supplemental protest allegation of an additional, unclaimed mistake in the awardee's bid.

In any event, we note that the awardee has offered a credible explanation showing that the challenged item price is not in error. In this regard, Emerson states that the price reflects the firm's last-minute business decision, based on other lower subcontractor quotes it received for that item and other electrical work, to decrease its price for the electrical work priced at cell number D157 of its spreadsheet in order to submit a more competitive overall bid.¹ Consistent with this explanation, Emerson's worksheets show that several electrical contractors submitted substantially lower quotes for other portions of the electrical work for which Emerson had included higher prices in its bid. Emerson explains that this caused it to reconsider its overall bid at the last minute, leading to the reduction in price for the electrical work priced at cell number D157 of its spreadsheet, in an effort, right before bid opening, to reduce its overall bid price. Emerson explains that its decision was based on its judgment that it would be able to have the full package of electrical work performed more economically by using multiple subcontractors based on their lower individual item pricing. We have no basis to question the accuracy of Emerson's explanation.

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ While Roy Anderson suggests that Emerson did not receive any quote as low as its cell number D157 price for the electrical work, the record shows that at least one electrical subcontractor had, in fact, submitted a quote for the work that was substantially lower than the particular subcontractor quote the protester argues Emerson mistakenly recorded on its bid workpapers.