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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-197785.2

July 7, 1980

Mr. James R. Dryden
Acting Director of Administrative Services
United States Department of Agriculture
Forest Service
P. O. Box 2417
Washington, D.C. 20013

AGC03034

Dear Mr. Dryden:

Reference is made to your letter of June 4, 1980 to our Office requesting advice on the appropriate procedures to be used in the correction of "apparent clerical mistakes" in bids in light of a statement in G. S. Hulsey Crushing, Inc., B-197785, March 25, 1980, 80-1 CPD 222.

Before discussing that matter, we must disagree with your introductory statement that the Hulsey solicitation provision "effectively precluded any correction of the contract unit prices shown on the bids received and materially negated the use of § 1-2.406-2 of the Federal Procurement Regulations (FPR) to correct any apparent clerical mistakes." That solicitation provision provided:

"Extended unit prices must equal the total bid amount. In the event they do not, unit prices shall govern."

Despite the presence of a provision substantially similar to the above clause in many solicitations, we have consistently held that if the evidence establishes that a mistake was made in the unit price and that the extended price is correct, the extended price must control. 40 Comp. Gen. 191 (1960). For example, in Engle Acoustic & Tile, Inc., B-190467, January 27, 1978, 78-1 CPD 72, which also had a "unit prices shall govern clause" like that in Hulsey, we permitted award on the basis of



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the extended price and correction of the unit price because the alleged ambiguity (misplaced decimal point) admitted of only one reasonable interpretation substantially ascertainable from the bid. See also Federal Aviation Administration-Bid Correction, B-187220, October 8, 1976, 76-2 CPD 326. In Hulsey, however, correction was not permitted because while there were wide variances in the unit and extended prices, either could have been reasonably intended.

Your concern, however, is with our statement in Hulsey that "In order to invoke the provisions of FPR § 1-2.402.2, the mistake sought to be corrected must be obvious on the face of the bid and the contracting officer must be able to ascertain the intended bid without the benefit of advice from the bidder." You state that some of your contracting officers are interpreting Hulsey as implying that they are not to get verification from the bidders of the bid actually intended before correcting apparent clerical mistakes because they feel this would be tantamount to giving the bidder a "second bite at the apple." You believe this interpretation is incorrect, i.e., verification is a necessary prerequisite to the correction of such a mistake. We agree.

The procedures for handling mistakes in bids prior to awards are set forth in FPR § 1-2.406 (1964 ed.). These procedures are based on the rule which holds that acceptance of a bid with knowledge of an error does not consummate a valid and binding contract. Alta Electric & Mechanical Co. v. United States, 90 Ct. Cl. 466 (1940). An examination of the regulation and our decisions demonstrates that before correction of an apparent clerical mistake can be made under FPR § 1-2.406-2, the mistake sought to be corrected must be obvious on the face of the bid, i.e., the contracting officer, without benefit of advice from the bidder, must be able to ascertain the intended bid. Hulsey, supra; Engle Acoustic & Tile, Inc., supra; 46 Comp. Gen. 77 (1966). This does not mean that the contracting officer is free to correct the bid without first seeking verification from the bidder, since

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as your letter correctly notes, there would be no "meeting of the minds" without such verification. Thus, FPR § 1-2.406-1 provides:

"After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this § 1-2.406. Such actions shall be taken prior to award."

This provision obviously applies to cases of apparent clerical mistakes as well as to other mistakes. Our statement in Hulsey meant only that correction under FPR § 1-2.406-2 is limited to cases where the intended bid is obvious from the bid itself and did not require any explanation from the bidder as to what was intended. It did not in any way eliminate the need for verification prior to correction. We point out, for your information, that while verification will be forthcoming in most cases, on occasion the data submitted by the bidder in response to a verification request will indicate that what seemed apparent from the face of the bid was not, in fact, the intended bid. See Dyneteria, Inc. (reconsideration), B-184321, July 14, 1976, 76-2 CPD 42 and discussions in Federal Aviation Administration, supra. We do not view the bid correction procedures as being tantamount to giving a bidder a "second bite at the apple," since the potential fraud flowing from a decision allowing bid correction is protected against by the high standard of proof which must be met before correction is authorized. Consequently, where bid correction procedures are strictly followed, we believe the United States should have the cost benefit of the

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bid as corrected, if it is still low. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294. In cases where the standard of proof has not been met, withdrawal, not correction is the sole remedy.

Sincerely yours,

Harry R. Van Cleave
for Milton J. Socolar
General Counsel