



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Eastco Building Services, Inc.

File: B-265851; B-265851.2

Date: December 29, 1995

Robert M. Cambridge, Esq., for the protester.

Cynthia S. Guill, Esq., Diane D. Hayden, Esq., and Patrick J. Coll, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's refusal to permit upward correction of firm's bid is denied where bidder's worksheets show that a mistake was made but do not establish the firm's intended bid for the allegedly omitted cost element.

DECISION

Eastco Building Services, Inc. protests the Department of the Navy's refusal to allow the firm to correct a mistake in its bid submitted in response to invitation for bids (IFB) No. N00187-94-B-8127, for the repair and maintenance of air conditioning equipment at various locations around Norfolk, Virginia. Eastco challenges the Navy's determination that the firm failed to establish its intended bid.

We deny the protest.

The IFB contained a total of 47 line items. For line item Nos. 0001 and 0002, which are the subject of Eastco's protest, bidders were required to submit prices for the performance of service calls that would require no more than 16 hours of labor and \$250 in material costs; bidders were to submit lump-sum unit and extended prices for an estimated quantity of 200 service calls performed during regular business hours (item 0001) and separate lump-sum unit and extended prices for an estimated quantity of emergency service calls performed after regular business hours (item 0002). All but one of the remaining line items called for the performance of periodic tasks, such as monthly inspections or winter overhauls of particular equipment; bidders were required to submit lump-sum unit and extended prices for each of these other line items which included the cost of materials associated with performance of the required task. The remaining line item, No. 0024, was divided into 15 subline items which called for bidders to submit loaded hourly rates for various categories of labor; material costs associated with these services were not

to be included in these rates, but instead were included as part of an IFB estimate of \$700,000 for material costs under item 0024.

In response to the contracting officer's request that it review its bid for possible mistakes, Eastco advised the agency that it had made a mistake in its calculations for line item Nos. 0001 and 0002. Eastco claimed that it did not include in its prices for these items the cost of materials required for the service calls, and based its bid instead on only the labor costs associated with the service calls. Eastco requested that it be permitted to adjust its bid upward to reflect an additional \$250 per service call--that is, the maximum material cost for which the contractor would be responsible--for a total upward correction of \$100,000 (\$250 multiplied by the IFB's estimated 400 regular and emergency service calls). In support of its request for correction, Eastco submitted an "original worksheet" for the two items--two undated, handwritten sheets, along with two undated typewritten versions of the same calculations (Eastco included an original and typewritten worksheet for each of the line items in dispute). None of these worksheets, however, included the material costs of \$250 per service call. Instead, they presented what Eastco claimed were the calculations of its loaded hourly rates for performing the service calls, including direct labor costs, travel, uniforms, equipment, payroll benefits, subcontractor costs, general and administrative (G&A) costs and profit.

The agency concluded that Eastco's worksheets, while showing that the firm had made a mistake, did not clearly show its intended bid. The agency therefore made several requests for additional information. In response to the Navy's first request, Eastco again submitted two undated, handwritten worksheets and two typewritten worksheets, claiming that these were the same exhibits that had been previously submitted. An examination of this set of handwritten worksheets, however, shows that although they contain the same calculations as those appearing on the originally submitted handwritten worksheets, they are not copies of the same documents. This set of worksheets also did not include any provision for material costs. In responding to the Navy's second request for additional information, Eastco provided copies of computer-generated worksheets for all line items except Nos. 0001 and 0002. Finally, in response to yet another request for information, Eastco provided the Navy with computer-generated worksheets for line item Nos. 0001 and 0002, which Eastco stated were "inadvertently precluded" from its earlier submission of computer-generated worksheets for the other line items. This last set of worksheets included material costs, showing the addition of \$250 to Eastco's cost for the service calls.

On the basis of this information, the Navy denied Eastco's request for correction. The agency found that, while it was apparent that Eastco had made a mistake, the firm's intended bid could not reasonably be ascertained because the firm had submitted a number of different worksheets containing various inconsistencies. For example, the agency has explained that one factor leading it to question Eastco's

documentation was the fact that the worksheets indicated an inconsistent approach to calculating material costs. For all items other than Nos. 0001 and 0002, Eastco entered its material costs in the "Supplies and Materials" field on its computer-generated worksheets, and these material costs were subject to application of Eastco's G&A and profit markups. In contrast, Eastco's claimed material costs for item Nos. 0001 and 0002--which were not even shown on its handwritten or typed worksheets--were not entered in the "Supplies and Materials" field of its computer-generated worksheets, but instead were entered as an additional "Allowable Supplies Cost" at the bottom of the worksheets and were not subject to the application of Eastco's G&A and profit markups. Further, Eastco used one rate for payroll taxes, calculated as a percentage of direct labor costs, for all line items except Nos. 0001 and 0002, and a different rate for items Nos. 0001 and 0002. Finally, Eastco did not furnish sworn affidavits attesting to the authenticity of the worksheets, or otherwise explaining the differences between the numerous versions of its worksheets for line item Nos. 0001 and 0002.

Eastco contends that the Navy erred in denying its request for bid correction. The protester principally argues that the agency improperly compared its calculations for line item Nos. 0001 and 0002 with its calculations for other line items that required the performance of specific tasks and required inclusion of material costs. Eastco asserts that such a comparison was improper because line item Nos. 0001 and 0002 did not require the calculation of a lump-sum price for performing service calls, but instead required the calculation of loaded hourly labor rates. Eastco further supports its position by noting that, for line item Nos. 0001 and 0002, the IFB provides that the cost of materials for service calls will be calculated at the time of performance based on actual quotes for the materials where there is a dispute between the agency and the contractor regarding such costs. Eastco contends that, because of these differences, it would have been more appropriate for the agency to compare its worksheets for line item Nos. 0001 and 0002 to its worksheets for line item No. 0024, which required calculation of loaded hourly rates for various categories of labor but did not include the cost of materials.

Eastco's interpretation of the IFB is unreasonable. While Eastco seeks to distinguish item Nos. 0001 and 0002 from the IFB's other task specific line items on grounds that line item Nos. 0001 and 0002 did not require material costs to be included in the price of a service call, this is inconsistent with the terms of the IFB. The solicitation clearly called for bidders to calculate a lump-sum price for service calls, which in turn were defined as "requiring not more than 16 estimated total labor hours and \$250 in direct material costs." This is identical to the other task specific line items requiring the submission of lump-sum unit prices. For example, line item No. 0003 calls for performing preventive maintenance inspections on a particular type of equipment, and states that such preventive maintenance inspections shall include necessary repairs, "provided that such repairs can be made within 8 estimated direct labor hours or less and the total direct material cost does

not exceed \$100. . . ." In addition, the solicitation's schedule "B" expresses the unit for line item Nos. 0001 and 0002 as "ea" or each, while in those instances where a loaded hourly rate is called for the unit expressed is "hr" or hour. (For the other task specific line items such as line item No. 0003, the unit is also expressed as "ea" or each.) The mere fact that the IFB included a method for resolving disputes about material costs in those instances where the agency and the contractor did not agree does not alter the plain meaning of the solicitation, which unequivocally called for calculation of lump-sum pricing for line item Nos. 0001 and 0002, including the cost for materials. We therefore find nothing objectionable in the agency's comparison of Eastco's pricing for line item Nos. 0001 and 0002 with its pricing for the other task specific line items.

As for the agency's refusal to permit Eastco to correct its bid, the authority to correct mistakes is vested in the procuring agency, and because the weight to be given evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless there was no reasonable basis for its decision. Three O Constr., S.E., B-255749, Mar. 28, 1994, 94-1 CPD ¶ 216; Southwind Constr.Corp., B-228013, Oct. 8, 1987, 87-2 CPD ¶ 346. Federal Acquisition Regulation (FAR) § 14.406 requires a high standard of proof--clear and convincing evidence of the mistake and of the bid actually intended--before correction is authorized. Where a firm presents conflicting evidence or explanations of its method of bid preparation or its intended bid, this high standard of proof has not been met, and correction should not be permitted. Three O Constr., S.E., supra. Here, the Navy based its denial of Eastco's requested correction on the quality of the evidence presented, and in particular on the number of different and inconsistent worksheets.

We think the agency reasonably disallowed Eastco's request for correction because it had not established its intended bid price by the required clear and convincing evidence. As noted, Eastco submitted three different sets of worksheets for line item Nos. 0001 and 0002--including two different handwritten "original" worksheets--only one of which (the computer-generated worksheets) included an entry for material costs. Moreover, although these computer-generated worksheets included an allowance for material costs, this allowance was entered in a different field on the worksheets (as "Allowable Supplies Cost" rather than as "Supplies and Materials") and was calculated without inclusion of the G&A and profit markups applied to the material costs for the other line items. In addition, there is no basis in the record to infer that Eastco ever intended to include the maximum amount of \$250 for material costs in its price for service calls. In this connection, we note that the firm's prices for other line items did not always include the maximum allowable amount for material costs. Under numerous other line items, the IFB allowed a maximum of \$100 in material costs. On some of these line items, Eastco did include \$100 in material costs. In other instances, however, Eastco included the lesser amounts of \$57 and \$80 for material costs. In view of this inconsistent

pricing, there is no basis to conclude that Eastco intended to include the maximum of \$250 in material costs for each service call. A firm's intended price for an allegedly omitted item must be ascertainable from its bid and accompanying worksheets, and correction will not be permitted where this is not possible. Apache Enters., Inc., B-255943; B-255943.2, Apr. 20, 1994, 94-1 CPD ¶ 270.¹

In view of the foregoing, we have no basis to object to the agency's actions. Eastco has offered what can only be described as conflicting evidence to show its intended bid for this cost, and this evidence simply does not meet the stringent standard of proof articulated in the FAR.

The protest is denied.

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of the United States.

¹We also note that Eastco's interpretation of the IFB as not requiring the inclusion of material costs for line item Nos. 0001 and 0002 suggests that the firm never intended to include material costs in its calculations for those line items when it prepared its bid.