



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: H.A. Sack Co., Inc.

File: B-278359

Date: January 20, 1998

Ronald J. Garber, Esq., Shapiro Fussell Wedge Smotherman & Martin, for the protester.

Capt. James A. Lewis, Department of the Army, for the agency.

Christina Sklarew, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably allowed correction of a mistake in the awardee's low bid where the awardee presented clear and convincing evidence of the existence of the mistake and of the intended bid within a narrow range of uncertainty, throughout which the bid remained low.

DECISION

H.A. Sack Co., Inc. protests the award of a contract to MMT Enterprises, Inc. under invitation for bids (IFB) No. DABT11-97-B-0011, issued by the Department of the Army for the replacement of a high temperature hot water distribution system in various buildings in Fort Gordon, Georgia, asserting that the Army improperly permitted MMT to correct a mistake in its low bid.

We deny the protest.

The IFB, issued on August 18, 1997, included three contract line item numbers (CLIN), one for each of three sets of buildings in which the high temperature hot water distribution system needed to be replaced; the first CLIN was listed as the base bid, while the other two were listed as options. Bid, performance, and payment bonds for each CLIN were separately priced as subCLINs. The Army reserved the right to make an award based on the base CLIN with or without either or both of the other two CLINs. The IFB stated that no funds were available at the time the IFB was issued and that no award would be made until appropriated funds were available.

The Army received seven timely bids, including MMT's and Sack's. When bids were opened on September 18, MMT's total aggregate bid of \$1,853,000 was low, while Sack's bid of \$2,719,942 was next low. Because both bids were significantly lower than the other submitted bids and lower than the government estimate of \$3,027,280, on that same day the contract specialist called both bidders and requested that MMT and Sack review their bids and verify their prices. Both bidders verified their prices, MMT on September 19 and Sack on September 18.

On September 26, however, MMT notified the contracting officer that it had discovered a mistake in the formula contained in the Lotus 1-2-3 electronic spreadsheets used to develop the job estimate used to prepare MMT's bid. MMT explained that, when it verified its bid previously, it had confirmed that all of the elements of cost needed to develop its job estimate were listed on the spreadsheet; however, a subsequent, more careful review revealed that a number of cost elements, while listed on the spreadsheet, had not been included in the column total that was calculated by the job estimate spreadsheet. MMT now requested that it be allowed to correct its bid. In support of its request, MMT submitted a computer diskette containing a spreadsheet file dated 9/18/97 (the date of bid opening), along with a printout of the spreadsheet and a statement that these were the original documents that had been used in preparing MMT's bid. MMT also provided a new diskette and printout showing a revised spreadsheet file dated 9/25, reflecting the upward correction that MMT was requesting.

The contracting officer reviewed MMT's documentation and concluded that the evidence was sufficient to support the firm's claim of a mistake and to permit the requested upward correction to \$2,239,000. This protest followed.

Sack argues that MMT's initial verification of its bid constitutes evidence which contravenes MMT's subsequent claim of a bid mistake. In addition, Sack contends that there is no clear and convincing evidence of the intended bid, because the amount of the corrected bid does not match the amount of the corrected spreadsheets. The spreadsheets establish the job estimate upon which MMT based its bid, but must be converted through additional calculations to arrive at the intended bid amount; Sack argues that, because the end sheets showing these calculations were not in existence at the time of bid opening, they cannot provide clear and convincing evidence of the intended bid.

A bidder who seeks upward correction of its bid price prior to award must submit clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended price. Federal Acquisition Regulation § 14.407-3(a). Workpapers, including records of computer generated software spreadsheets/worksheets (hard copy printouts, computer disks, tapes or other software media), 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. Merrick Constr. Co., Inc., B-270661, Apr. 8, 1996, 96-1 CPD ¶ 181 at 2.

Whether the evidence of the intended bid amount meets this standard is a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Id. 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 after correction. Maple Constr. Co., Inc., B-270073, Feb. 6, 1996, 96-1 CPD ¶ 43 at 2.

Sack provides no authority to support its allegation that once a bid has been verified, that verification constitutes contravening evidence which bars any subsequent claim of mistake, and we are not aware of any such prohibition. On the contrary, the fact that when MMT initially reviewed its bid it did so simply by ascertaining whether it listed all of the elements of cost that were used to develop the estimate--and then concluded that the bid must be accurate because it apparently included all of the intended totals--actually supports MMT's subsequent assertion regarding the nature of its mistake and the actually intended bid. The mistake could only be found by re-adding all of the entries listed on the worksheet. When MMT eventually did so, and found that the total job estimate amount that was generated by the program formula was mistaken because it did not reflect the sum of all the entries on the worksheet, it discovered that its bid was not, in fact, the amount that MMT had intended. MMT's subsequently submitted documents (identifying the items that were inadvertently omitted from the computation) provide a reasonable basis for the agency to conclude that a mistake was made.

The worksheets that MMT used to calculate its job estimate list the various materials and tasks that are required to perform the work for the base bid and each of the options, such as "sawcut sidewalk," "excavate," "concrete," and so on; each item is then followed by a line of figures, such as the required labor hours and pay rate, as well as the unit of measure, that were used to calculate the subtotal for each item. The list for each CLIN includes an entry for "form walls"; in each case, the items and amounts listed above this item were left out of the total cost computation by the spreadsheet calculation, which applied a defective formula for which cells (items) should be included in this total calculation. For the base bid, for example, which lists 121 items, "form walls" is the 14th entry; the costs listed for the preceding 13 entries were omitted from the total. The costs listed for these items add up to \$206,052. Similarly, for the first option item, 51 items are listed, from which 9 were omitted, resulting in a mistaken omission of \$26,699 from the total; for the second option, 95 items are listed, from which 8 items were omitted, reducing that total by \$97,340. The sum of these mistakes, as they appear on the spreadsheet, is \$330,091.

While the mistaken total contained on the spreadsheet was \$1,878,288, MMT's original bid was \$1,853,000. MMT explains that it calculates its bid prices by using 98.65 percent of the job estimate figures computed on its spreadsheets, and the contracting officer confirms that it is "a common practice in the construction trade to bid prices slightly reduced from offeror's job estimate to increase competitiveness" When the original total is reduced in this manner and then is rounded up to the nearest thousand, it becomes the \$1,853,000 that MMT submitted as its bid. When all of the items on the spreadsheet are correctly added, the new overall total is \$2,269,074. If this is reduced to 98.65 percent, as was the original bid amount, it becomes \$2,238,441.50, or, rounded, \$2,239,000. This is the corrected amount that MMT requested.¹ As corrected, MMT's bid is \$480,942 lower than Sack's bid. Notwithstanding Sack's argument that the later calculations were never performed prior to bid opening, we believe that the Army had a reasonable basis to conclude that MMT intended to bid this amount. The presented evidence makes clear that MMT believed it was submitting a total price that included everything that was listed on its spreadsheet and that, but for the spreadsheet program's omission of the certain groups of items from the computation of the total, MMT's bid would have been \$2,239,000. The omitted amounts are clearly listed on each of the spreadsheets, and the subsequent calculation (reducing the bid amount to 98.65 percent of the estimate amount and rounding that figure) is entirely consistent with the pricing methodology that is apparent from MMT's initial, mistaken price entry.²

The contract that the Army awarded was limited to the IFB's first two CLINs. The total amount for CLINs 0001 and 0002 was calculated to be \$1,432,960. While Sack objects that the endsheet calculations upon which the award amount is based did not exist at the time bids were submitted, and that the intended bid amount therefore cannot be ascertained with sufficient certainty to permit correction, we disagree. As long as the calculations required to produce the corrected award amount are consistent with the methodology that MMT employed in its original bid and the intended bid amount is thus ascertainable within a narrow range of uncertainty, correction based upon those calculations is permissible.³

¹While MMT initially requested correction of its bid to \$2,269,074, which is simply the sum of all of the items on the spreadsheet, it later amended this request to \$2,239,000, to reflect the same adjustments that were made to its original bid, *i.e.*, reduction to 98.65 percent of the estimate, and rounding.

²See Utah Constr. and Dev. Co., B-222314, June 10, 1986, 86-1 CPD ¶ 541 at 4 n.3 (where bidder had rounded an element of its original bid, the same rounding should be used in calculating its corrected bid).

³When the award amount was calculated to reflect only the first two CLINs, an apportionment formula was applied in order to ensure that the bond costs for each
(continued...)

Under these circumstances, the agency's decision to permit MMT to correct its bid was reasonable.

The protest is denied.

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³(...continued)

CLIN were accurately allocated. While this precise formula is not directly ascertainable from MMT's worksheets, it results in a bid amount (\$1,432,960) that is not meaningfully different from the sum of the corrected figures on the spreadsheets for the two CLINs, which, when reduced to 98.65 percent and rounded, as discussed above, is \$1,430,000. Thus, even without engaging in MMT's calculations to apportion its bond costs, the intended bid for the awarded CLINs can be determined within a narrow range of uncertainty of \$2,960 (i.e., the difference between \$1,432,960 and \$1,430,000). Based on a comparison of total bids, MMT's bid is clearly low no matter which figure in this range is used; based on only the CLINs for which the contract was awarded, MMT's corrected bid remains approximately \$300,000 lower than Sack's bid.