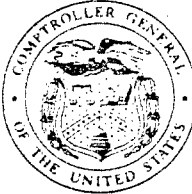


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Boyle
PLT
14804

FILE:

B-198674

DATE: September 3, 1980

MATTER OF:

Wismer & Becker Contracting Engineers

DIGEST:

1. Bid form for item 13 pricing information, which included line for insertion of total item price, forced bidders to (1) omit either subitem unit prices or subitem total prices, or (2) alter bid form to provide both prices. Low bid for contract under Federal grant is not ambiguous or non-responsive where only reasonable interpretation is that low bidder provided subitem total prices because (1) subitem total prices add exactly to item 13's total price of \$196,335, (2) pricing in base bid was consistent with pricing of spares, and (3) it is inconceivable that low bidder intended item 13 price of more than \$19 million and then submitted total bid of \$9,555,553 for 19 items.
2. Low bidder's verification of bid did not render bid ambiguous or nonresponsive since (1) verification of initial bid was unnecessary, and (2) verification confirmed low bidder's intent to bid based on subitem total prices, not just subitem unit prices, which is consistent with only reasonable interpretation of bid.
3. Argument--that spacing between numbers and mark that could be comma shows that low bidder's unit price for one of 19 items was ambiguous--is without merit since (1) nature and appearance of handwritten numerals, (2) total item price compared to price spread, and (3) remoteness that unit price for one item would

~~011916~~ 113209

[Protest Against Contract Award]

cause \$14 million error in \$9,555,553 total bid for 19 items, support grantee's determination that unit price was \$1,461.33, not \$146,133.

4. Second low bidder contends that low bidder must have made mistake in bid of \$9,555,553--where engineer's estimate was about double that amount--and grantee should have requested verification. GAO concurs with grantee and grantor that verification request is unnecessary where preaward survey and engineering consultant indicate that price is reasonable and where low bidder was aware of large disparity between its bid and other bid prices and engineer's estimate but low bidder has not suggested that there was an error in its bid.

Wisner & Becker Contracting Engineers (W&B) complain of the award of contract No. Y741 by Metropolitan Dade County, Florida, to Computer Sciences Corporation (CSC) for a communications system associated with Dade County's rapid transit system. The contract was awarded pursuant to a grant administered by the Urban Mass Transit Administration (UMTA), and the project is 80 percent funded by UMTA.

W&B contends that (1) CSC's bid with respect to item 13 was ambiguous and nonresponsive and that CSC's verification of item 13 rendered the bid nonresponsive, (2) CSC's bid with respect to item 14 was ambiguous and nonresponsive and that verification of this item was not requested, and (3) CSC's price is unreasonably low and evidences a mistake. Dade County considered and rejected W&B's contentions and UMTA concurred. In our view, the grantee's determination and the grantor's concurrence were reasonably based. Thus, W&B's complaint is denied.

Invitation for bid No. Y741 (IFB) requested prices on 19 major items and a total contract price. Five bids were received; CSC was the low bidder; W&B was

second low; two were higher than the Government engineer's estimate. The relevant amounts follow:

CSC	\$ 9,555,553
W&B	15,974,227
Estimate	18,626,900

For item 13, the IFB provided five lines for subitem unit prices and one line for total item price but no lines were provided for each subitem's total price. CSC bid as follows.

<u>Item</u>	<u>Description</u>	<u>Qty.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
13	<u>Vehicle Radio Equipment</u>				
13a	Radios	105	sets	\$161,864	
13b	Power Supplies	68	each	31,748	
13c	Antennas (auto)	37	each	2,723	
13d	Control Heads	37	each	n/a	
13e	Antennas (transit)	68	each	n/a	
	Total Vehicle Radio Equipment				\$196,335

W&B and one other bidder altered the bid form to add lines for each subitem's total price, one bidder inserted only subitem unit prices, and CSC and one other bidder reportedly put the product of each subitem's unit price times number of units in the subitem unit price column.

Dade County concluded that the prices CSC entered in the subitem unit price columns represented the product of quantity times subitem unit price because (1) the schedule did not provide lines for both subitem unit prices and each subitem's total prices, (2) the subitem total prices add exactly to the total price shown for item 13 in CSC's bid, and (3) the subitem prices given were consistent with those spares in exhibit "H" to CSC's

bid. UMTA concurred with Dade County's conclusion since the only other interpretation of CSC's bid is that the prices in the subitem unit price column should be multiplied by the quantities resulting in a total price for item 13 of \$19,255,335. Since the engineer's estimate for that item was \$408,650 and W&B's price was \$235,295, it appeared to UMTA (and Dade County) that the only reasonable interpretation of CSC's bid is the interpretation resulting in the total price for item 13 of \$196,335.

In an effort to remove any doubt, Dade County asked CSC to verify its price for item 13 and CSC responded by changing subitem total prices in a manner which did not change the total price for item 13, as follows:

<u>Item</u>	<u>Total</u>
13a	\$154,327
13b	31,748
13c	2,723
13d	4,921
13e	<u>2,616</u>
Total	\$196,335

W&B argues that CSC's initial bid is ambiguous because it is susceptible to the two reasonable interpretations discussed above. W&B admits, however, that one interpretation is "less likely" since the sum of 13a-e equals the total item amount of \$196,335, and W&B admits that "certainly the \$161,864 figure makes more sense as a total price for item 13a." In our view, there is only one reasonable interpretation of CSC's bid for item 13 and that is the one adopted by Dade County with the concurrence of UMTA. We arrive at this view for the reasons cited by Dade County plus one more: CSC's total price of \$9,555,553 is the exact sum of the 19 major item prices only if item 13's price is \$196,335. It is inconceivable that CSC could have

intended a price of \$19,255,335 for item 13 and permitted a bid to be submitted with a total price of \$9,555,553.

Thus, we find no merit in W&B's argument that CSC's bidding approach was carefully designed to permit CSC to accept or reject the award after bids were opened based on the IFB's provision that in the event of a discrepancy between unit price times units and total item price, unit price shall govern. First, it seems that the provision is not applicable because this situation does not involve a discrepancy between unit price times units and total price. Here, we have concluded that CSC's entry was not subitem unit price but total subitem price. Second, even in situations where a similar IFB provision was applicable in direct Federal procurements, we have held that where circumstances establish that the error is in the unit price, the bid may be considered for award based on the total price. See, e.g., Engle Acoustic & Tile, Inc., B-190467, January 27, 1978, 78-1 CPD 72.

Next, W&B argues, citing our decision at 45 Comp. Gen. 800 (1966), that CSC's verification, changing subitem total prices, renders CSC's bid ambiguous and non-responsive. W&B also refers to our decision at 39 Comp. Gen. 653 (1960), which held that a bid confirmation may not be inconsistent with a reasonable interpretation of the bid as submitted. W&B concludes that CSC rather than confirming its subitem total prices for item 13, changed them. CSC also raised doubt, in W&B's view, concerning whether "n/a" in the bid meant the "n/a" priced subitem would be provided at no charge or the subitem was unnecessary and would not be provided.

UMTA and Dade County do not address this argument.

First, in our view, since CSC's bid with respect to item 13 was susceptible to only one reasonable interpretation, Dade County was not required to seek verification of CSC's bid. See Philadelphia Corrugated Container Company, B-194662, May 24, 1979, 79-1 CPD 375 (In determining whether there was a duty to verify bid prices, we have stated that the test is whether under the facts and circumstances of the particular

case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer.). Second, while it appears that CSC erroneously believed that it could use Dade County's verification request as an invitation to change its subitem total prices, CSC's verification may be accepted as support for its intent to bid subitem total prices in the subitem unit price column of item 13. Thus, CSC did not cast doubt on what we believe is the only reasonable interpretation of CSC's bid. Third, CSC did not attempt to change its total bid price for item 13. Rather, we think that CSC was attempting to demonstrate and confirm its intent to furnish all subitems for the specified total price and that its bid had not separately priced 13d and 13e but priced these subitems in 13a on a consolidated basis.

Fourth, the decisions cited by W&B are not applicable here. Our decision at 45 Comp. Gen. 800 involved a situation where the low bidder, in response to the contracting officer's inquiry, explained that it did not intend to provide free delivery, as the solicitation required. We concluded that in the light of its explanation, the mistake in its bid became apparent, and we recommended that its bid be disregarded. Here, CSC's action may be accepted as confirmation of its bid based on subitem total prices for item 13. Our decision at 39 Comp. Gen. 653 involved a situation where the low bidder, in response to the contracting officer's inquiry, confirmed the contracting officer's interpretation by explaining that its bid price was intended to cover all items and subitems set forth in the schedule even though individual prices for subitems were not provided in the bid. We held that the low bidder was not granted any undue advantage in being permitted to confirm its intended bid price because the confirmation was not inconsistent with a reasonable interpretation of the bid. Here, CSC's action confirms that its initial bid was based on subitem total prices in the unit price column of item 13, which is not inconsistent with the only reasonable interpretation of CSC's bid. Contrary to W&B's position, this decision tends to support Dade County's determination. In that decision and here, one total price was submitted, subitems were not separately

priced and the low bidders confirmed that the subitems were priced on a consolidated basis, which was consistent with a reasonable interpretation of each bid as submitted.

Therefore, we believe that CSC's bid was responsive as submitted, and CSC's subsequent confirmation did not render the bid ambiguous or nonresponsive. We note, however, that it would be violative of sound procurement principles for Dade County to permit CSC to increase subitem total prices after bid opening. CSC could reduce its subitem total prices since a price reduction would constitute a late modification to the otherwise successful bid containing terms more favorable to the contracting agency.

W&B's second basis of protest concerns an alleged ambiguity in item 14 of CSC's bid for 100 personal portable radio equipment sets. CSC's bid had the same consecutive six numbers in the unit price column as in the total price column. W&B argues that the spacing between numbers and a mark that could be a comma indicates that the CSC unit price is \$146,133. Then, CSC's bid was about \$14 million higher. W&B also contends that Dade County should have asked CSC to verify that item price.

We believe that this aspect of W&B's protest is without merit and we concur with Dade County and UMTA that (1) based on the nature and appearance of the handwritten numerals, (2) the total price for the item indicated by CSC which arithmetically supports the total bid price, and (3) the comparison of the price spread for this item, it was reasonable to conclude that CSC's unit price for item 14 was \$1,461.33. Moreover, we believe it inconceivable that CSC could have intended a price of over \$14 million for item 14 alone and then permitted a bid with a total price of \$9,555,553 to be submitted. Thus, in our view, the bid was responsive, and verification of this item was unnecessary.

W&B's third basis of protest is that CSC's total price is so unreasonably low that Dade County should have suspected a mistake in CSC's bid and verification

of the entire price schedule should have been requested. The record shows that Dade County performed a preaward survey and acted upon the advice of its general architectural and engineering consultant in concluding that CSC's price was reasonable. UMTA concurs in Dade County's determination.

We note that bids were opened on April 9, 1980. From the bidding results and subsequent events, CSC knew or should have known that there was a large disparity between its price and other bid prices and engineer's estimate, which appears to be the only possible basis upon which a mistake would be suspected. From bid opening until the date of award, May 20, 1980, CSC had ample opportunity to review its bid for errors, in particular those errors suggested by W&B. To date, CSC has not suggested that there was an error in its bid. In view of Dade County's careful reasonable price determination and UMTA's concurrence, on the record, we have no basis to disagree.

W&B's complaint is denied.

Larry R. Van Cleave

For the Comptroller General
of the United States