

DECISION

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

11/007/006
PL-11
29404

FILE: B-214170

DATE: September 25, 1984

MATTER OF: Solon Automated Services, Inc.

DIGEST:

An allegedly mistaken bid that is low both as submitted and if corrected upward may be corrected where it is obvious that the bidder failed to multiply its unit prices as stated for the base year by the increased equipment quantity estimates for the succeeding option years.

Solon Automated Services, Inc. protests the award of a contract to Tenavision, Inc. under invitation for bids (IFB) No. M67001-84-B-0007, issued by the Marine Corps. The procurement calls for the rental and maintenance of contractor-owned laundry washers and dryers at Camp Lejeune, North Carolina, and the Marine Corps Air Station, New River, North Carolina, for a 3-year period (a base year plus two 1-year options). Solon complains that the agency improperly corrected Tenavision's allegedly mistaken bid, and requests that the options not be exercised and the requirement be resolicited at the end of the base year or, alternatively, if the options are exercised, that Tenavision be required to perform the contract at its originally submitted prices. We deny the protest.

Background

Section B at page 2 of the solicitation notified bidders that the estimated quantities of electric washers, electric dryers, and propane gas dryers required for the

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base year were, respectively, 782, 662, and 33; these figures were listed in a column labeled "Estimated Quantity". Spaces were provided for a bidder to insert an offered rental rate per month, and the total yearly amount. Section B, which continued onto page 3, also provided spaces for bidders to insert their offered prices for the 2 option years. However, the estimated quantities of equipment for those years were not set forth in the "Estimated Quantity" column, but rather were listed in a following clause, B-3, on page 3:

"THE ESTIMATED NUMBER OF WASHERS AND DRYERS ON THE 1ST OPTION YEAR WILL BE 850 ELECTRIC WASHERS, 710 ELECTRIC DRYERS, AND 33 GAS DRYERS. THE ESTIMATED NUMBER OF WASHERS AND DRYERS ON THE SECOND OPTION YEAR IS 954 ELECTRIC WASHERS, 767 ELECTRIC DRYERS AND 33 GAS DRYERS."

The format of section B engendered some confusion, since a majority of bidders apparently overlooked clause B-3 and failed to increase their rental rates per month to reflect the increased quantities. Tenavision, which inserted a unit price per type of machine per base-year month, offered identical prices for all 3 years:

<u>Base Year</u>	<u>Unit Price</u>	<u>Rental Rate Per Month</u>	<u>Rental Rate Per Year</u>
Electric Washers	\$11.98	\$9,368.36	\$112,420.32
Electric Dryers	9.11	6,030.82	72,369.84
Gas Dryers	10.32	340.56	4,086.72

1st Option year

Electric Washers (No entry)		\$9,368.36	\$112,420.32
Electric Dryers	"	6,030.82	72,369.84
Gas Dryers	"	340.56	4,086.72
	"		

2nd Option year

Electric Washers (No entry)		\$9,368.36	\$112,420.32
Electric Dryers	"	6,030.82	72,369.84
Gas Dryers	"	340.56	4,086.72

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Accordingly, from the face of its bid as originally submitted, Tenavision offered a total price of \$188,876.88 for the base year and the same price for each option year, or a grand total of \$566,630.64 as its offered price for the entire contract period, which was the low bid.

Solon also entered a unit price for each type of machine per month, multiplying its unit prices by the increased quantities for the two option years:

<u>Base Year</u>	<u>Unit Price</u>	<u>Rental Rate Per month</u>	<u>Rental Rate Per Year</u>
Electric Washers	\$11.00	\$ 8,602	\$ 103,224
Electric Dryers	11.00	7,282	87,384
Gas Dryers	11.00	363	4,356
<u>1st Option Year</u>			
Electric Washers	\$11.00	\$ 9,350	\$ 112,200
Electric Dryers	11.00	7,810	93,720
Gas Dryers	11.00	363	4,356
<u>2nd Option Year</u>			
Electric Washers	\$11.00	\$ 10,494	\$ 125,928
Electric Dryers	11.00	8,437	101,244
Gas Dryers	11.00	363	4,356

Solon's price for the base year totaled \$194,964, with \$210,276 for the first option year and \$231,528 for the second option year, making the firm's bid for the entire contract period \$637,768, which was second low.

After bids were opened, the contracting officer concluded that Tenavision had made a mistake by not multiplying its base year unit prices by the increased option year quantities. The contracting officer believed this to be only a clerical error as recognized in Defense Acquisition Regulation (DAR), § 2-406.2, reprinted in 32 C.F.R. pts. 1-39 (1983), and asked Tenavision for a verification to this effect. By letter, the firm responded that this was indeed the case, stating that:

"we have made an error in the calculations under the first and second option years . . . any increase in quantities . . . will reflect an increase in the total price. However, the unit price for the washers and dryers . . . will remain the same."

Accordingly, the contracting officer upwardly adjusted Tenavision's bid to reflect this situation. The bid for the two option years thus was increased by a total of \$51,228.36, computed by multiplying the increased equipment quantities for those years by the unit prices offered by the firm for the base year. Tenavision's bid for the entire contract period thus was increased to \$617,859, but because it was still low, the contracting officer awarded Tenavision the contract at that revised price.

Protest and Analysis

Solon asserts that the contracting officer acted improperly by determining that Tenavision had made only a clerical error in not multiplying its unit prices by the increased quantities for the option years. Solon argues that DAR, § 2-406.2, in permitting pre-award correction of a clerical mistake apparent on the face of a bid if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended, does not recognize a situation such as this as being a mere clerical error. Solon emphasizes that the only examples of such apparent mistakes given in the regulation are: obvious error in placing a decimal point; obvious discount errors; obvious reversal of the price F.O.B. destination and the price F.O.B. factory; and obvious error in designation of a unit. In Solon's view, despite Tenavision's assertion that it did not see the increased quantities in clause B-3, it is also arguable that Tenavision did not intend to increase its offered price for either option year, irrespective of the increased quantities, but rather sought to assure that its bid would be low by keeping its yearly prices constant throughout the entire contract period (thus in effect reducing its unit prices for the two option years).

Solon also asserts that, if it is in fact true that Tenavision did not read clause B-3, then the unit prices given for the base year cannot be used as multipliers for any of the years' quantities because it cannot be established that Tenavision would have intended to offer the same unit prices of \$11.98, \$9.11 and \$10.32 for the respective machines if it had known of the additional capital outlay and servicing that would be necessitated by more equipment.

In our view, regardless of whether Tenavision's error should be considered "clerical" or not, the bid properly was corrected. We agree with the contracting officer that the only reasonable way to view the situation is that Tenavision merely failed to multiply its unit prices as stated for the base year by the increased equipment estimates contained in clause B-3. In contrast, we see no basis to view as reasonable Solon's suggestion that Tenavision might have intended to keep its total yearly prices constant throughout the contract period, thereby in effect reducing its unit prices for the option years. We note that although two other bidders in fact did reduce their unit prices for the option years (one of them extending its unit prices by multiplying by the correct equipment estimates, the other failing to note the increases and only multiplying its unit prices by the base year estimates), these firms' base year unit prices were much higher than their unit prices for the option years. Thus, both firms had essentially front-loaded their bids, which Tenavision, having offered the lowest aggregate prices for the base year, clearly did not do.

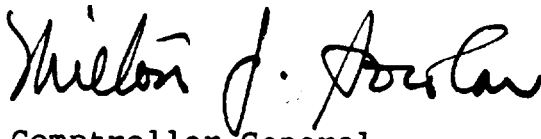
Furthermore, we do not believe that Tenavision's base year unit prices should not have been regarded as firm amounts by which the option years' equipment estimates could be multiplied. It is mere conjecture on Solon's part that Tenavision's unit prices would have increased across-the-board if Tenavision had factored the possible capital outlay and service considerations occasioned by the equipment increases into its unit price calculations.

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Accordingly, it is our view that Tenavision's intended bid was readily ascertainable from the face of its bid as originally submitted, and therefore that the mistake made by not multiplying its unit prices by the true equipment estimates was properly correctable. Cf. SCA Services of Georgia, Inc., B-209151, March 1, 1983, 83-1 CPD ¶ 209. In any event, correction did not prejudice either Solon in particular or the competitive bidding system as a whole, since Tenavision's bid, both as corrected (discounting Solon's suggestion that Tenavision may have intended to bid even higher had it noticed clause B-3) and as uncorrected, remained low. In this respect DAR, § 2-406.3(a)(2) permits upward correction in such a case, regardless of whether the error was truly "clerical," if the evidence clearly establishes the existence of the mistake and the intended bid.

The protest is denied.

for 
Comptroller General
of the United States