



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bush Painting, Inc.

File: B-239904

Date: August 30, 1990

William F. Bush, Jr., for the protester.
 Millard F. Pippin, Department of the Air Force, for the agency.
 Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency improperly permitted bidder to correct a mistake in its bid where the only evidence of the alleged omitted cost is a subcontractor's quotation which, while it is evidence of the cost of the work, does not establish bidder's intended bid for the work.

DECISION

Bush Painting, Inc. protests the award of a contract to McKinley Maintenance/McKinley General Contractors under invitation for bids (IFB) No. F65503-90-B-0013, issued by the Department of the Air Force for painting petroleum tanks at Eielson Air Force Base (AFB), Alaska. Bush asserts that McKinley did not submit a responsive bid and that the Air Force improperly permitted McKinley to correct a mistake in its bid.

We sustain the protest.

The IFB was issued on March 23, 1990, for painting petroleum tanks at Eielson AFB, and, as amended, required that bids be submitted by May 11. The IFB required the contractor to provide all plant, labor, material, and equipment necessary to sandblast, prepare the surfaces and paint the tanks. The IFB included four line items with the estimated footage to be painted for each item. Item No. 0001 concerned pipes; item No. 0002, the exterior of the tanks; item No. 0003, miscellaneous tank structures; and item No. 0004, the interior of the tanks. Bidders were required to insert a unit price and an estimated total price for each line item,

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and a total not-to-exceed amount for all four line items. As amended, the IFB also required bidders to submit, with their bids, a contractor's qualification statement which, among other things, demonstrated that they had completed three similar projects.

Three bidders responded to the IFB. McKinley submitted the low bid of \$274,930 and Bush submitted the second-low bid of \$456,732. Immediately after bid opening, McKinley informed the contracting officer that it had made a mistake in its bid. McKinley was instructed on the steps to take to request bid correction. McKinley subsequently requested that its bid be corrected by \$127,750 to \$402,680 because in computing its bid for line item No. 0002, it failed to include the cost of sandblasting the tank exteriors, estimated to be 73,000 square feet.

McKinley explained that in preparing the bid it received a subcontractor quotation to perform interior sandblasting at \$1.90 per square foot and exterior sandblasting at \$1.75 per square foot. McKinley stated that it computed its bid for line item No. 0002 on the morning of bid opening, after working on line item Nos. 0001 and 0003, which did not require sandblasting, and in the last minute rush simply forgot to include the cost of sandblasting. To support its claim, McKinley submitted two affidavits from its employees; a subcontract quotation for sandblasting; and the worksheets on which it computed its costs for line item Nos. 0002 and 0004. McKinley also stated that because it was responsible for the error it would not request that its bid be increased by the 20 percent markup on subcontractor's costs which it generally included in its bid.

The contracting officer who reviewed the claim concluded that McKinley had submitted clear and convincing evidence of the mistake, how the mistake occurred and its actual intended bid. The contracting officer also found that even if McKinley had added the 20 percent subcontractor markup to line item No. 0002, its total bid would be \$428,230, still below the bid submitted by Bush. Consequently, McKinley was permitted to correct its bid, and was awarded the contract at a corrected bid price of \$402,680.

Bush protests that the Air Force improperly permitted McKinley to correct the mistake in its bid, arguing that McKinley's contention that it simply forgot to include the cost of sandblasting for line item No. 0002 in its bid is not credible.

An agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a

mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.603-3(a); Praught Constr. Corp., B-222420, June 2, 1986, 86-1 CPD ¶ 508. For upward correction of a low bid, workpapers may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. BAL/BOA Servs., Inc., B-233157, Feb. 9, 1989, 89-1 CPD ¶ 138.

In support of its claim, McKinley submitted affidavits of the two employees who prepared the bid explaining how the mistake occurred; a quote from a subcontractor to perform interior and exterior sandblasting; and the worksheets it used to prepare its bid. We find that the evidence McKinley submitted establishes that the firm mistakenly left out an important element of the required work from its bid, amounting by its own estimate to more than one-third of the bid price. We also conclude that the firm offers a reasonable explanation for how it would have determined the price of the omitted work. The evidence available, however, does not so clearly and compellingly establish McKinley's intended bid that the firm's mistake may be remedied.

Bid correction is generally allowed only when the bidder's own worksheets clearly establish what the firm would have bid. See, e.g., Montgomery Constr. Co., Inc., B-221317, Feb. 28, 1986, 86-1 CPD ¶ 210. Here, the worksheet for line item No. 0002, exterior painting, is broken down into the various elements of required work, and makes no reference to sandblasting. The worksheet for line item No. 0004 shows that McKinley used the \$1.95 subcontractor quote for interior sandblasting in computing its bid for that line item, but does not show that it intended to use the \$1.75 subcontractor quote for exterior sandblasting in preparing its bid for line item No. 0002. It does not show any particular markup on the \$1.95 subcontractor quote--instead, it shows the total of the subcontractor quote and several other cost elements totalling about \$11,000, to which was added a sum of \$10,000.

While the record contains the subcontractor quote, this is evidence only of the cost of the work if done by that subcontractor; it does not establish that McKinley intended to include this amount in its bid. Neither is there any corroborative evidence of what markup would have been applied to an amount for sandblasting. The omitted cost for sandblasting is so large compared to the other items in McKinley's bid that if the firm's actual markup were about double what it represents, Bush painting would have the low bid. We do not see any clear and convincing evidence of McKinley's intended bid, and we must conclude that the

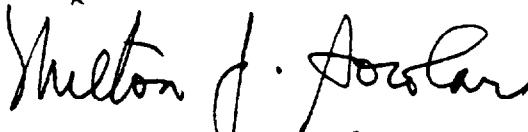
Air Force improperly permitted McKinley to correct the bid. Pneumatic Constr. Co., B-207871, Aug. 31, 1982, 82-2 CPD ¶ 193.

Bush also protests that McKinley submitted a nonresponsive bid because its qualification statement failed to show that it had completed three similar projects as required by the IFB. Because we sustain the protest on the mistake issue, we need not address this issue. Finally, to the extent that Bush in supplemental comments on the protest challenges the quality of McKinley's actual performance under the contract to date, that contention involves a question of contract administration that our Office does not review. See 4 C.F.R. § 21.3(m)(1) (1990).

After this protest was filed the Air Force determined that, because the painting could only be performed in the summer months, it was in the best interest of the government to continue performance notwithstanding the protest; performance is now 50 percent complete. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(b)(2) (1988), where the head of a procuring activity determines that performance of a contract notwithstanding the protest is in the best interest of the government, our Office is required to make its recommendation for corrective action without regard to any cost or disruption from terminating, re-competing or reawarding the contract. 4 C.F.R. § 21.6(c).

Accordingly, since we find that the Air Force improperly permitted McKinley to correct the mistake in its bid, we recommend that the contract awarded to McKinley be terminated for the convenience of the government and a contract be awarded to Bush, if it is otherwise eligible for award. We also find that Bush is entitled to recover the costs it incurred in filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1).

The protest is sustained.

for 
Comptroller General
of the United States