



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Roy McGinnis & Company, Inc.

File: B-239710

Date: September 24, 1990

John M. Taffany, Esq., Bailey & Shaw, for the protester.
Donald O. Ferguson, Esq., Gardner, Ferguson, Sommers &
Davis, Inc., for Wallace L. Boldt, General Contractor, Inc.,
an interested party.

Lester Edelman, Esq., Department of the Army, for the
agency.

Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contracting officer improperly permitted correction of a bid containing discrepancy between arithmetic total of line item prices and total price indicated in bid where either price reasonably could have been intended but only one was low. Solicitation provision providing that apparent errors in addition of lump-sum and extended prices shall be corrected is not applicable where the bid does not clearly indicate an apparent addition error.

DECISION

Roy McGinnis & Company, Inc. (McGinnis) protests the proposed award of a contract to Wallace L. Boldt, General Contractor, Inc. (Boldt) under invitation for bids (IFB) No. DACA63-90-B-0070 issued by the U.S. Army Corps of Engineers, Fort Worth District, for additions to and alterations of the Training Center Medical Clinic at Lackland Air Force Base, Texas. McGinnis asserts that the Fort Worth District improperly permitted Boldt to correct an apparent mistake in its bid, thereby displacing McGinnis as the low bidder.

We sustain the protest.

The solicitation, issued on March 22, 1989, called for bids on nine line items, including lump-sum subtotals for five of the items and unit and extended prices for the other four

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items, as well as a total base bid for all nine items. The solicitation also called for prices on four additive items. The solicitation provided that the low bidder, for purposes of award, would be the responsible bidder offering the low aggregate amount for the base bid item plus (in the order of priority listed in the schedule) those additive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened.

McGinnis and Bolat were two of the six contractors that submitted bids in response to the IFB. After the bids were opened on May 2, 1990, McGinnis was announced as the apparent low bidder for the base bid and additives one through four based on its bid of \$4,037,862.35; Bolat's bid in the amount of \$4,600,937 for the base bid and the four additives was fifth low. McGinnis's price for the total base bid was \$3,966,193.35, whereas Bolat's price for the total base bid was \$4,522,967. McGinnis's and Bolat's price for the base bid items were as follows:

<u>Line Item</u>	<u>McGinnis</u>	<u>Bolat</u>
1 <u>1/</u>	\$ 90,117.36	\$ 105,024.00
2	2,135,766.00	2,293,364.00
3	1,592,280.00	1,191,000.00
4	553.20	272.00
5	7,819.75	3,286.00
6	755.04	385.00
7	92,266.00	155,000.00
8 <u>2/</u>	30,719.00	30,719.00
9	<u>15,917.00</u>	<u>15,917.00</u>
Total base bid	\$3,966,193.35	\$4,522,967.00

Upon reviewing the bids, the contracting officer discovered that Bolat's bid contained a discrepancy between the total submitted for the base bid and the arithmetic total of the nine line items. Although Bolat had submitted a total base bid price of \$4,522,967, the correct arithmetic total of the line item prices listed in Bolat's bid was \$3,794,967, \$728,000 lower. If Bolat's bid were corrected to reflect

1/ Line item 1 consisted of 7 sub-items in unit and extended prices. The figure given for this line item for each bidder is the total of these sub-items.

2/ Line items 8 (operation and maintenance manuals) and 9 (final as-built drawings) were priced by the agency for all bidders at \$30,719 and \$15,917, respectively.

that total amount, Boldt would displace McGinnis as the apparent low bidder.

The contracting officer resolved this discrepancy in favor of the lower, correct total of the nine line items on the basis of paragraph (a)(4) of the IFB's "Arithmetic Discrepancies" clause which stated:

"ARITHMETIC DISCREPANCIES: (1975 JUL)

"(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

"(1) Obviously misplaced decimal points will be corrected;

"(2) In case of discrepancy between unit price and extended price, the unit price will govern;

"(3) Apparent errors in extension of unit prices will be corrected; and

"(4) Apparent errors in addition of lump-sum and extended prices will be corrected.

"(b) For the purposes of bid evaluation, the Government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, extensions, and totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids. (EFARS 14.201/90)"

The contracting activity then advised Boldt that the addition of its bid was not correct. After reviewing its workpapers, Boldt advised orally and in writing that its intended total base bid was \$3,794,967, as the contracting officer had calculated pursuant to the Arithmetic Discrepancies clause. Boldt explained that two company officers were involved in calculating the company's bid prices and conveying them by telephone to an employee, located near the bid opening site, who filled in the bid form which was actually submitted. According to Boldt, one

officer provided the on-site person with the individual line item prices as each was finally calculated and that officer then posted those line item prices on a duplicate of the IFB's bid schedule, from which a second officer ran the total for the base bid. Bolat's vice president stated that after arriving at a price for line item 3--a lump-sum item for the training center alterations--of \$1,191,000, which he conveyed to the on-site employee, he erroneously posted that figure on the duplicate bid schedule as \$1,919,000. The company president then totaled all the line item prices from the duplicate bid schedule to arrive at a base bid total of \$4,522,967, which was also transmitted to the on-site employee who submitted the bid. As a result, Bolat states, its bid included both the correct amount of \$1,191,000 for line item 3 and the incorrect base bid total of \$4,522,967, a discrepancy which was not detected prior to bid opening due to the press of time.

McGinnis protested to our Office after being notified by the Corps of Engineers that it had evaluated Bolat as the low bidder under the solicitation's Arithmetic Discrepancies provision. McGinnis argues that this decision was improper. McGinnis contends that the \$728,000 discrepancy between the total base bid submitted by Bolat and the lower, actual arithmetic total of the 9 line items cannot be treated as a mere mistake in addition because the bid actually intended is not ascertainable from the bid itself. McGinnis argues that the Bolat bid is reasonably susceptible of two different interpretations, i.e., that the line items in Bolat's bid are correct but the total is incorrect or, the total is correct but one or more line items is incorrect. McGinnis states that while the contracting officer's approach assumes that the line item prices are correct and the total is incorrect, nothing in the bid itself supports this assumption since Bolat's prices for all line items and its total base bid are generally within the range of the government's estimate and the other bids received.

The Fort Worth District officials argue that the action was proper because the arithmetic error was an "apparent error" in the addition of lump-sum and extended prices and therefore correctable under the Arithmetic Discrepancies clause. The contracting officer states that the "arithmetical discrepancy was a simple miscalculation arrived at by the transposition of the figure \$1,191,000 in bid Item No. 3" and argues that "[t]ransposition of numbers in the estimating documents of bidders occur[s] not infrequently." The district argues that the \$728,000 difference logically appeared in line item 3 and that the probability of the transposition of the numbers in the course of totaling the figures is sufficiently great to

support, with nothing more, a conclusion that the arithmetic discrepancy did, in fact, so occur.^{3/}

The Federal Acquisition Regulation provides that apparent clerical mistakes, such as the obvious misplacement of a decimal point, obviously incorrectly stated discounts or obvious mistakes in the designation of a unit, may be corrected by the contracting officer before award. FAR § 14.406-2 (FAC 84-12). Additionally, the FAR provides for correction of other mistakes disclosed before award; however, if correction would result in displacing one or more lower bids, such determination may not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. FAR § 14.406-3 (FAC 84-12).

These regulations permit correction where a discrepancy admits to only one reasonable interpretation that is ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic and experience. See Huggins Constr. Co., Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, only one of which is low, the bid must be rejected. See Virginia Beach Air Conditioning Corp., B-237172, Jan. 19, 1990, 90-1 CPD ¶ 78; Argee Corp., 67 Comp. Gen. 421 (1988), 88-1 CPD ¶ 482. Here, there is no obvious or apparent explanation for the discrepancy on the face of Bolat's bid between the stated base bid total and the true mathematical total of the nine items in question. The \$728,000 difference between the stated total and the true total does not suggest where a mistake might have been made.

In our view, the discrepancy on the face of Bolat's bid reasonably could be attributable to either of two causes: (1) each of the nine line items was stated correctly, but the items were incorrectly totaled, or (2) the stated total

^{3/} In support of its position, the district also cites our decision B-172900, Dec. 21, 1971, concerning a protest by the McCarty Corporation which involved similar facts, and which was subsequently addressed by the Court of Claims in McCarty Corp. v. United States, 499 F.2d 63 (Ct. Cl. 1974). Our decision in McCarty is inapposite since it did not address the propriety of the agency's action in allowing the kind of correction which is at issue here. Further, the subsequent Court of Claims decision specifically determined that such correction was improper.

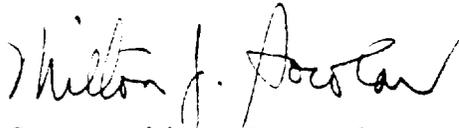
of the nine line items was correct but one or more of the nine line items was incorrectly stated. The contracting officer believed that the discrepancy was attributable to the first of these explanations. However, Bolat's price of \$4,522,967 on the total base bid was only slightly below the government estimate of \$4,619,753.32 and within the range of the other bidders' prices. For example, some of the other bidders offered \$3,966,193.35, \$4,289,000, and \$4,712,538 for the total base bid. Thus, in view of the range of prices received, Bolat's offered price for the total base bid was reasonably susceptible of being interpreted as its intended price for the base bid from the face of the bid.

Because there is no large disparity between the Bolat total base bid and the other bidders' total base bids, we cannot say that there is an apparent error in Bolat's price. Similarly, we find no large disparity between Bolat's bids on individual line items and the other bidders' bids on these line items. For example, on item 3, the item Bolat says it incorrectly transposed on its duplicate bid sheets, Bolat shows a price of \$1,191,000. Other bidders show prices of \$1,116,676, \$1,213,596, \$1,457,000, and \$1,820,000. Again, Bolat's bid is not so grossly out of line with the others as to suggest an apparent error. Thus, Bolat's bid reasonably may be interpreted as intending either of two prices, the price offered by Bolat or the true mathematical sum of the nine line items, and the bid actually intended cannot be determined without the benefit of advice from the bidder. An agency may not rely on the bidder's confirmation of the bid where either of two prices reasonably could have been intended. To hold otherwise would permit the bidder to gain an unfair advantage over the other bidders by allowing the bidder discretion, after prices are revealed, to choose between a bid price which results in award and a bid price which does not. Hudgins Constr. Co. Inc., B-213307, supra.

Here, the District placed substantial reliance on the Arithmetic Discrepancies clause contained in the solicitation as the basis for correction of Bolat's bid. In our view, this clause cannot, by itself, create a presumption that only one of two plausible prices appearing on a bid is necessarily correct. Such a presumption would be contrary to the FAR requirements for correction discussed above. See Hudgins Constr. Co., Inc., B-213307, supra.; DeRalco, Inc., B-205120, May 6, 1982, 82-1 CPD ¶ 430; Fortec Constructors, B-203627, Feb. 16, 1982, 82-1 CPD ¶ 132. At most, this clause might govern correction where it is clear from the face of the bid that the mistake in question is only a simple error in the addition of the extended and lump-sum prices, and the correction does not result in

displacement of the low bidder. The clause does not permit correction here because it is not clear that there is an apparent addition error in Boldt's bid, and correction would displace McGinnis and make Boldt the low bidder. See Armstrong & Armstrong Inc. v. United States, 356 F. Supp. 514 (E.D. Wash. 1973), aff'd, 514 F.2d 402 (9th Cir. 1975). Accordingly, the protest is sustained.

We recommend that the Corps of Engineers award the contract to McGinnis, if otherwise appropriate. We also find the protester to be entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1990). McGinnis should submit its claim directly to the agency.



for

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