



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Marlowe Heating & Air Conditioning Company

File: B-251467

Date: March 30, 1993

Barbara A. Duncombe, Esq., Vorys, Sater, Seymour and Pease, for the protester, Joseph M. Goldstein, Esq., Department of the Air Force, for the agency. Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency reasonably concluded that the awardee presented clear and convincing evidence of a mistake in its bid and the intended bid price, within a narrow range of uncertainty, and the bid is low with or without correction, agency properly allowed bidder to correct the mistake and increase its price to the amount representing the low end of the range of uncertainty.

DECISION

Marlowe Heating & Air Conditioning Company protests the award of a contract to Twigg Corporation under invitation for bids (IFB) No. F49642-92-B0056, issued by the Department of the Air Force for the renovation of office space at Bolling Air Force Base, Washington, D.C. Marlowe asserts that the Air Force improperly permitted Twigg to correct a mistake in its low bid.

We deny the protest.

The IFB required bidders to submit prices for two line items. Item 1 was for the repair of the heating, ventilation, and air conditioning system, while item 2 was for alteration of the office space. Bid opening was scheduled for September 24, 1992. Twigg submitted the low bid at a total price of \$1,145,000. Marlowe submitted the next low bid of \$1,432,000. Shortly after bid opening, Twigg advised the Air Force that it had discovered an error in calculating its bid price and requested that it be increased to \$1,393,310. Specifically, Twigg stated that in totaling its prices for each category of work under line item 1, it had omitted its price for piping of \$230,000.

To support the request for correction, Twigg submitted a pricing sheet for item 1 which listed the different categories of work to be performed. For each category, prices were entered under one or more of the following three columns: materials, labor, and subcontractors. The pricing sheet contained totals for each column and showed that a 21 percent markup was applied to the materials and labor column totals. An 8 percent markup was added to the subcontractors total of \$572,754. While the pricing sheet listed a category called "piping," no price for "piping" was inserted under any of the three columns. The pricing sheet showed a grand total for item 1 of \$950,000.

Twigg supported the claimed \$230,000 error with worksheets setting forth the various subitems of the piping work such as demolition, purchase of the pipe and fittings, and costs for installation of an "in line filter" and corresponding price entries. The awardee also submitted a separate summary worksheet relating to the piping portion of the work which stated, "piping 230,000 + markup."

The firm also submitted a narrative explanation of how the price entries for each of the subitems comprising the piping work were computed. Certain prices were taken from a standard cost guide containing estimates of labor and material costs. Other figures were based on actual quotes for material and labor, and some pricing information was taken from Twigg's inventory. The awardee submitted a sworn statement certifying its pricing.

Twigg stated further that the entire \$230,000 for piping work should have been entered into the subcontractor column. Thus, according to Twigg, had this mistake not occurred, its total for the subcontractors column would have been \$230,000 higher, or \$802,754, and an 8 percent markup would have been applied to this figure. Thus, line item 1 should have been \$1,198,310 instead of \$950,000 as stated in its bid. Line item 2 would remain unchanged, at \$195,000. As a result, its intended total bid was \$1,393,310.

Based on the information provided, the Air Force was satisfied that Twigg had submitted clear and convincing evidence of the mistake and its intended bid. Accordingly, the agency allowed Twigg to correct its bid.

Marlowe concedes that a mistake was made in the preparation of Twigg's bid. It contends, however, that the amount of Twigg's intended bid remains questionable. Specifically, the protester argues that the Air Force did not challenge the credibility of the evidence submitted to support the intended price, stating that Twigg has not explained when the worksheets were prepared. The protester also contends that the Air Force should not have accepted Twigg's choice

of which markup--the 8 percent subcontractor figure rather than the 21 percent figure used for labor and materials--to use for the omitted piping work.

Mistakes in a bid generally do not render the bid unacceptable if the errors are correctable under the Federal Acquisition Regulation (FAR) § 14.406 mistake in bid procedures. P.K. Painting Co., B-247357, May 5, 1992, 92-1 CPD ¶ 424. Correction is proper if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, and the corrected bid does not displace other bidders. FAR § 14.406-3(a). Correction may be allowed even where the intended bid price cannot be determined exactly, provided 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. See J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43. In those circumstances, correction is limited to increasing the contracting price only to the bottom end of the range of uncertainty. Price/CIRI Constr., B-230603, May 25, 1988, 88-1 CPD ¶ 500.

We treat the question of whether the evidence of the mistake and the bid intended meets the clear and convincing standard as a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Gunco, Inc., B-238910, July 17, 1990, 90-2 CPD ¶ 46. Workpapers may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence. In-state Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86.

We have no basis to question the Air Force's decision to allow Twigg to correct its bid under these circumstances.

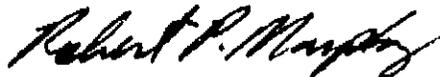
Concerning the credibility of Twigg's worksheets, the protester has failed to provide any evidence, other than speculation, to support its suspicion that Twigg's worksheets may not have been prepared prior to submission of its bid or were altered after bid opening. On the other hand, Twigg provided the Air Force with a sworn statement that its corrected price is based on the worksheets as "added correctly." Moreover, to the extent that Marlowe is arguing that the worksheets themselves did not indicate when they were prepared, we note that there is no requirement that worksheets be dated, see Tri-State Consultants, B-250700, Dec. 22, 1992, 92-2 CPD ¶ 433, and there is nothing in the record which indicates that the worksheets were prepared after the bid was submitted.

Marlowe next challenges the markup percentage claimed by Twigg, arguing that Twigg's worksheets do not show that the piping work would be performed by subcontractors and thus subject to an 8 percent markup. It states that elsewhere in Twigg's bid, materials purchased from suppliers and in-house labor were marked up by 21 percent. Thus, the protester suggests that the awardee intended to apply a 21 percent markup to the \$230,000 allocable to the piping portion of the work. In response, the agency states that Twigg explained to its satisfaction that, under these circumstances, it was Twigg's practice to categorize the piping work under the subcontractors column, and to apply the subcontractor markup.

Even if we were to agree with the protester that the Air Force could not have reasonably found that the awardee intended to apply the 8 percent subcontractor markup to this portion of the work, it is clear that, at most, the piping work would be marked up by 21 percent. Even with this (unclaimed) added cost, Twigg would still be the low bidder, and its low bid would be between \$1,393,310 and \$1,423,300. See Tri-State Consultants, supra. In our view, this difference of approximately 2 percent constitutes an acceptable narrow range of uncertainty, and since the awardee itself is claiming the lower amount, the correction was properly allowed. See Price/CIRI Constr., supra.

Finally, the protester points to alleged errors or discrepancies in Twigg's worksheets concerning portions of Twigg's bid which are unrelated to the piping work. These alleged defects do not change our conclusion about the reasonableness of the agency's determination because they are not related to the items at issue in Twigg's mistake claim. See Trataros Constr., Inc., B-250384.3, Feb. 2, 1993, 93-1 CPD ¶ ____.

The protest is denied.



for James F. Hinchman
General Counsel