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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McKnight Construction Company

File: B-257782

Date: November 7, 1994

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.

Robert D. Marshall, Esq., Griffin, Cochrane & Marshall, for Conner Brothers Construction Company, Inc., an interested party.

Lester Edelman, Esq., and Reeves Lewis, Esq., Department of the Army, for the agency.

Daniel I. Gordon, Esq., and Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected a bid where the bidder, who requested correction of the allocation of prices among line items, was unable to provide clear and convincing evidence of the intended allocation, and the uncorrected bid was materially unbalanced.

DECISION

McKnight Construction Company protests the rejection of its bid and the award of a contract to Conner Brothers Construction Company, Inc. under invitation for bids (IFB) No. DACA21-94-B-0059, issued by the Department of the Army, Corps of Engineers, for barracks renewal work at Fort Benning, Georgia. McKnight contends that the agency unreasonably denied its request to correct a mistake in its bid and then improperly rejected its bid as materially unbalanced.

We deny the protest.

The Savannah District of the Corps of Engineers issued the IFB on May 17, 1994. The solicitation included 10 line items for a "base bid" and 19 line items for "additives." The base bid line items covered a series of tasks in four buildings. Thus, line item 0001 covered asbestos abatement for buildings 9006, 9007, and 9024; line item 0002 covered the demolition of building 9024; line item 0004 covered the interior demolition and renovation of building 9006; and line item 0005 covered the interior demolition and

renovation of building 9007. The additives entailed similar work in other buildings as well as other assorted tasks.

Four bids were received by bid opening on June 20. The total amounts bid and the government estimate were as follows:

McKnight	\$16,850,000
Conner Brothers	16,969,000
Bidder C	17,213,000
Bidder D	17,298,422
Gov't estimate	18,115,491

McKnight's bid thus appeared to be low. On the day after bid opening, Conner Brothers submitted a written request that McKnight's bid be rejected as materially unbalanced due to the prices that McKnight bid for the four line items described above. Specifically, for the asbestos abatement work, line item 0001; the four bids; and the government estimate were as follows:

McKnight	\$4,203,500
Conner Brothers	196,376
Bidder C	200,000
Bidder D	305,900
Gov't estimate	395,557

For line item 0002, the demolition of one building, the relevant prices were as follows:

McKnight	\$4,203,500
Conner Brothers	37,396
Bidder C	20,000
Bidder D	23,050
Gov't estimate	55,780

McKnight's price for these two items was thus far higher than the prices of the other bidders and the government estimate. Moreover, McKnight's pricing was identical for the two line items, while for the other bidders and the government estimate, the price for the demolition work was only 8 to 20 percent of the price of the asbestos abatement work.

For line item 0004, covering the interior demolition and renovation work in one building, the bids were as follows:

¹Because sufficient funds were available at bid opening for the award of the base bid and the first additive only, the "total" figures used in this decision refer to the amounts bid for that combination. Consideration of the other additives would have no bearing on the protest.

McKnight	\$ 250,000
Conner Brothers	4,303,584
Bidder C	3,334,000
Bidder D	4,230,759
Gov't estimate	4,114,668

For line item 0005, covering the identical work in another building, every bidder bid the same price it had offered for line item 0004.²

While the agency was considering Conner's challenge to the responsiveness of McKnight's bid, McKnight advised the agency on June 22 that there was a mistake in its bid. According to McKnight, due to the rush of bid preparation, it had inadvertently reversed its bid prices for line items 0001 and 0002 with the prices for line items 0004 and 0005. The bidder provided its workpapers to the agency; however, those papers provided no basis for the \$250,000 figure that McKnight contended it had intended to bid for line items 0001 and 0002.

The agency concluded that, although there was clear and convincing evidence that McKnight had made a mistake, there was not clear and convincing evidence of the intended allocation of line item prices. On that basis, the agency denied McKnight's request for correction.

Having determined that correction was not permissible, the agency turned to consider whether to reject the uncorrected bid as materially unbalanced. The agency found that the prices bid by McKnight for line items 0001 and 0002 were grossly inflated, and that the prices for line items 0004 and 0005 were grossly understated. Because the overpriced asbestos abatement work covered by line item 0001 will be performed before the underpriced interior demolition and renovation work covered by line items 0004 and 0005, the agency determined that the bid was materially unbalanced and rejected it on that basis. Award was then made to Conner Brothers, whose bid was next low, and this protest followed.

The general rule regarding the authority to permit correction of bids is that such authority is limited to bids that, as submitted, are responsive to the solicitation, and may not be used to permit correction of bids to make them responsive. Federal Acquisition Regulation (FAR) § 14.406-3. Because a materially unbalanced bid is considered nonresponsive, FAR § 52.214-10(e), the agency argues that we cannot reach the question of mistake

²For reasons unexplained in the record, the government estimate for line item 0005 was slightly lower (by some \$60,000) than the estimate for line item 0004.

correction if the bid, as submitted, is unbalanced. However, we have recognized an exception for situations, such as this one, where the alleged mistake involves only the allocation among line item prices and has no bearing on the ranking of bids for purposes of award. Satellite Servs., Inc., B-224412, Nov. 5, 1986, 86-2 CPD ¶ 521. Here, correction of the mistake would not alter McKnight's overall price or the ranking of bids; it would simply change the allocation of line item prices within that total.

Accordingly, bid correction could be permissible in this case, but only if there were clear and convincing evidence of both the existence of a mistake and the intended allocation of prices. Id. See also FAR § 14.406-3(a). The requirement for clear and convincing evidence reflects the need to protect the integrity of the sealed bid procurement process, where, except for narrowly defined circumstances, award should be made on the basis of the bids as submitted. See Black Diamond Energies, Inc., B-241370, Feb. 5, 1991, 91-1 CPD ¶ 119. Whether, in fact, the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. M. A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296. Here, while there is no doubt of the existence of a mistake, the agency had a reasonable basis for its conclusion that the evidence of the intended allocation of prices was not clear or convincing.

McKnight contends that it simply reversed the prices for line items 0001 and 0002, on the one hand, with those for line items 0004 and 0005, on the other. Comparison of the government estimate and the other prices bid for line items 0004 and 0005, which represented the bulk of the work, supports McKnight's contention that the \$4,203,500 price it submitted under line items 0001 and 0002 was intended to be the bid for line items 0004 and 0005. Nonetheless, recognition of this error does not necessarily establish that McKnight intended to bid \$250,000 for line items 0001 and 0002. In contrast to the situation with line items 0004 and 0005, where the \$4,203,500 figure bid by McKnight is consistent with the government estimate and other bids, bidding the identical amount (\$250,000) for line items 0001 and 0002 is implausible on its face. As noted above, the government estimate and all other firms' bids indicated that line item 0002 (demolition work) would cost the government only 8 to 20 percent of the cost of line item 0001 (asbestos abatement). McKnight offers no support for the identical \$250,000 figures for these two line items, other than to state that its subcontractors failed to submit quotes for either item by the time of bid opening and that McKnight, operating "under extreme time pressures," essentially made the \$250,000 entries with no support in the workpapers.

McKnight argues that there is no other reasonable explanation other than the entries for line items 0001 and 0002 were simply reversed with those for line items 0004 and 0005. That argument, however, does not constitute clear and convincing evidence of the intended bid, particularly in light of the absence of any direct evidence of its intended bid for line items 0001 and 0002. This is not an instance where the workpapers establish that the bidder merely misplaced a decimal point, erred in copying a number, or otherwise made a clerical error in preparing the final bid documents. Cf. J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ 353. We therefore find that the agency had a reasonable basis to deny the request for bid correction.

Accordingly, the agency needed to determine whether the uncorrected bid was acceptable. Apparently because this was the ground raised by Conner immediately after bid opening, the agency focused on whether McKnight's bid was materially unbalanced.

Determining whether a bid is materially unbalanced is a two-step process. There must first be a determination of mathematical unbalancing, and then a determination that the unbalancing is material. A bid is mathematically unbalanced if some line items are overpriced while others are underpriced. FAR § 15.814. Here, it is undisputed that McKnight's uncorrected bid is mathematically unbalanced; the thrust of the protester's request for bid correction, in fact, is its concession that its bid overstated prices for some line items and understated prices for others.

The unbalancing in McKnight's uncorrected bid, with prices for the work to be performed early in performance is grossly out of proportion to the value of that work, it is so to the extreme that it would normally render the bid materially unbalanced. The protester does not dispute this, but argues that it will effectively be estopped, due to the representations made in connection with the request for bid correction and this protest, from requesting progress payments that would reflect the inflated prices the company mistakenly bid for the early work. In McKnight's view, this estoppel works to preclude the firm's bid from being materially unbalanced. As noted above, however, material unbalancing is a matter of responsiveness, and the responsiveness of a bid must generally be ascertained from the bid documents, not from explanations made by the bidder after bids have been opened and prices exposed. PRO/DES, Inc., B-256541, June 30, 1994, 94-1 CPD ¶ 395. A bidder

thus cannot salvage an otherwise nonresponsive bid by post-bid opening representations or commitments such as those now offered by McKnight. Id. Accordingly, we find that the agency properly rejected McKnight's bid as materially unbalanced.

The protest is denied.


for Robert P. Murphy
Acting General Counsel