



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

## Decision

**Matter of:** Unico Construction Company, Inc.  
**File:** B-258862  
**Date:** January 24, 1995

Garreth E. Shaw, Esq., Bailey, Shaw & Deadman, for the protester.  
Susan Humphrey for Premium Construction Company, an interested party.  
Gregory H. Petkoff, Esq., and Joseph E. Cazenavette, Esq., Department of the Air Force, for the agency.  
Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably permitted correction of mistake in allocation between two line items where the bidder provided clear and convincing evidence of a mistake and of the intended allocation.

### DECISION

Unico Construction Company, Inc. protests the award of a contract to Premium Construction Company under invitation for bids (IFB) No. F41636-94-B-0032, issued by the Department of the Air Force, for repairs and improvements to the dental clinic at Lackland Air Force Base. Unico contends that the agency improperly granted the awardee's request to correct a mistake in its bid and that the uncorrected bid should have been rejected as nonresponsive.

We deny the protest.

The Air Force issued the IFB for this procurement, a total small disadvantaged business set-aside, on August 26, 1994. The IFB contained two line items: line item 1, for the construction of an addition to the dental clinic building; and line item 2, for the repair and renovation of the existing structure. The IFB advised bidders that a \$300,000 statutory cost limitation applied to line item 1.

Bid opening was at 3 p.m. on September 26. Only two bids were received, Unico's and Premium's. The bids and government estimate were as follows:

	<u>Unico</u>	<u>Premium</u>	<u>Government Estimate</u>
Line Item 1	\$300,000	\$529,885	\$279,424
Line Item 2	\$606,000	\$263,944	\$339,486
<u>Total</u>	<u>\$906,000</u>	<u>\$793,829</u>	<u>\$618,910</u>

Premium's total bid was thus more than \$100,000 lower than Unico's. Unlike Unico's bid and the government estimate, Premium's bid price for line item 1 was considerably higher than its price for line item 2. Indeed, Premium's price for line item 1 substantially exceeded the \$300,000 statutory cost limitation.

Within 24 hours of bid opening, Premium alleged that it had made a mistake in its bid by inadvertently reversing the order of the two line item amounts. Premium submitted a written explanation on the day after bid opening, in which it stated that the firm's estimator "at the bid opening inadvertently transposed the numbers on our bid." The total bid amount remained the same. Premium included a copy of its original worksheets with the explanation.

The agency reviewed the worksheets, which provided a detailed breakdown of the overall amounts, and concluded that they supported the claim that Premium had inadvertently reversed the entries for line items 1 and 2. Because the contracting officer determined that the intended bid for each of the two line items was clear, he allowed Premium to correct its mistake, and award was made to that firm on September 30. Unico then filed this protest, alleging that the contracting officer lacked an adequate basis to allow the bid correction and that Premium's bid should have been rejected, since its uncorrected price for line item 1 exceeded the statutory cost limitation.

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. Although a bid that exceeds a statutory cost limitation is nonresponsive, our Office has recognized an exception to the general rule 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 Premium's overall price or the ranking of bids; it would simply change the allocation of line item prices within its total price.

Accordingly, bid correction was permissible in this case if there was 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. McKnight Constr. Co., B-257782, Nov. 7, 1994, 94-2 CPD ¶ 177. 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, the agency had a reasonable basis for its conclusion that a mistake occurred and that the evidence of the intended allocation of prices was clear and convincing. Specifically, the agency reasonably found evidence of Premium's intended allocation in the fact that the worksheets established that the components of the \$529,885 line item actually correspond to the requirements for line item 2, while the components of the \$263,944 line item correspond to the line item 1 requirements. For example, the worksheets indicated \$24,850 for landscaping as a component of the \$529,885 figure. Landscaping was a task under line item 2, but not under line item 1 (the worksheets did not indicate any component for landscaping for Premium's other line item amount, \$263,944).

The pricing of the demolition component of each line item price further supported the claim that the two line item prices had been reversed. Line item 1, the construction of the addition to the clinic, did not entail significant demolition work; line item 2 included considerable demolition work, described in the IFB as "remove 550 [square feet] of existing space to accommodate a female's restroom [with] locker room". Premium's worksheets showed \$500 for demolition under one line item and \$20,701 under the other. The much lower figure was a component of the \$263,944 price, thus suggesting that it referred to line item 1, although Premium entered it under line item 2.

Similarly, the agency considered the worksheet figures for plumbing, electrical work, and roofing and sheet metal as further evidence of the intended allocation. The worksheets showed that the \$529,885 figure included amounts three to

ten times higher for plumbing, electrical work, and roofing and sheet metal than did the \$263,944 figure. The agency explains that the work included under line item 2, the repair and renovation of the existing clinic building, entails far more of these kinds of work than the addition covered by line item 1, since the existing building covers 30,113 square feet, while the addition covers only 2,230 square feet. Accordingly, the repair and renovation work will involve substantially higher costs for plumbing, electrical work, and roofing and sheet metal. The component numbers for these aspects of the work thus were reasonably viewed by the agency as further evidence that the \$529,885 figure should have been entered for line item 2, not line item 1.

Unico argues that this evidence should be viewed as inadequate, because Premium did not submit a sworn statement identifying when the worksheets were prepared and did not submit subcontractor costs and quotations, verification of its audited indirect cost rates, or its planning staffing charts. Unico also challenges the credibility of Premium's explanation of how the alleged mistake occurred. According to Unico, since bids are sealed prior to bid opening, Premium's estimator could not have transposed the two line item amounts "at the bid opening," as the bidder claims. In addition, Unico points to Premium's failure to identify the telephone number from which the estimator allegedly received the figures he was to enter on the bid and its failure to retain the scratch paper on which he claims to have initially written these figures down.

These arguments do not call into question the reasonableness of the agency's finding that there was clear and convincing evidence of Premium's intended allocation of its bid prices. Much of the information whose absence is cited by the protester--subcontractor costs and quotations, audited indirect cost rates, and staffing charts--is entirely irrelevant with respect to the question of whether there is clear and convincing evidence of Premium's intended allocation of bids. In our view, the agency reasonably found Premium's explanation credible. We note that the firm's protest comments, in which it confirmed that the worksheets were the original ones used by the company in preparing its bid and explained that the circumstances in which the mistake arose, were signed and sworn to by both the estimator and the company's president.<sup>1</sup> When

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<sup>1</sup>Premium has explained that the estimator was to enter the final line item amounts immediately prior to the 3 p.m. bid opening time (hence the firm's reference to his entries being made "at the bid opening"), and has provided its

(continued...)

considered in its entirety, the record plainly confirms that the agency reasonably concluded that there was clear and convincing evidence both of the existence of a mistake and of Premium's intended allocation of prices between line items 1 and 2.

The protest is denied.

  
for Robert P. Murphy  
General Counsel

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<sup>1</sup>(...continued)  
telephone records, which show a 2-minute collect call from a coin-operated telephone at Lackland Air Force Base to Premium's telephone number at 2:52 p.m. on the day of bid opening.