



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Reliable Mechanical, Inc.

File: B-282874.2

Date: September 13, 1999

Charles F. Merz, Esq., Charles F. Merz & Associates, for the protester.
Lawrence J. Sklute, Esq., Sklute & Associates for Cooper Construction, Inc.,
an intervenor.

Maria S. Kavouras, Esq., Environmental Protection Agency, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to permit upward correction of the apparent low bid is reasonable where the low bidder's worksheets reasonably established clear and convincing evidence of the mistake and the bid intended, and the protester's contentions are premised on apparent differences between the methodology by which it calculated its bid and how the awardee prepared its bid.

DECISION

Reliable Mechanical, Inc. protests the award of a contract to Cooper Construction, Inc. under invitation for bids (IFB) No. PR-CI-99-13375, issued by the United States Environmental Protection Agency (EPA), for construction work. Reliable contends that EPA improperly permitted Cooper to correct a mistake in its bid.

We deny the protest.

The IFB covered interior Phase II renovations at selected laboratories, toilet rooms, stairways, and related mechanical, electrical, plumbing and fire protection systems and for new main electrical panel boards and asbestos abatement at the EPA National Exposure Research Laboratory, Athens, Georgia. Agency Report, Tab D-1, Part 1. The IFB schedule delineated the work under, and requested separate fixed prices for, five line items entitled Base Bid Phase II, Add Option 1, Add Option 2, Add Option 3, and Add Option 4. RFP § B, at B.1. The base bid item called for renovation and construction at Lab Nos. 253, 254, 255, 256, 257, and 258, including,

but not limited to related mechanical, electrical, plumbing, and fire protection; Add Option 1 required new construction and renovations at Lab Nos. 259, 260, and 261; Add Option 2 called for new construction and renovations at Lab Nos. 250 and 251; Add Option 3 was for stair renovations; and Add Option 4 was for restroom renovations. Contracting Officer's Statement at 2.

Four bids were received by bid opening. Cooper submitted the apparent low bid at \$2,313,000, which was comprised of a base bid of \$1,247,000 and option prices of \$391,000, \$217,000, \$62,000, and \$396,000, respectively. Reliable was next low with a bid of \$2,718,000, which was comprised of a base bid of \$1,995,000, and option prices of \$297,000, \$183,000, \$61,000, and \$182,000. The remaining bids were \$2,789,400 and \$2,802,615. *Id.* Because Cooper's base bid was significantly lower than the other bids and its Add Option 4 bid was significantly higher than the other bids, EPA requested Cooper to verify its bid.

Cooper responded by acknowledging a mistake in bid, requesting an upward adjustment of \$217,000, and furnishing EPA supporting documentation of the claimed mistake, which included copies of its original handwritten bid worksheets and an affidavit from the preparer explaining the nature of the mistake. Agency Report, Tab I. Cooper explained that it developed separate worksheets to correspond with each of the line items, which it stored in five separate folders, labeled consistent with the line items. In the folder created for Add Option 4 (entitled ALT.4 – Bathroom), Cooper mistakenly included page 4 of the worksheet for the base bid, which showed a total \$396,000 for the base bid electrical work with supporting calculations, along with the worksheet for Add Option 4, which showed a total \$217,000 with supporting calculations. Because page 4 of the base bid worksheets was placed over the intended worksheet for Add Option 4 in the folder, Cooper mistakenly bid \$396,000 for Add Option 4, instead of including this amount in its base bid, and failed to bid \$217,000 for Add Option 4. After reviewing Cooper's request, including the documentation in support, the EPA approved Cooper's request for correction, and made award at the revised amount to that firm. This protest followed.

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) § 14.407-3(a); Holmes Mechanical, Inc., B-281417, Jan. 13, 1999, 99-1 CPD ¶ 6 at 2. Work papers, including handwritten worksheets, may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Whether 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. Holmes Mechanical, Inc., *supra*, at 2-3.

In challenging the claimed mistake, Reliable does not directly attack the worksheets, which our review indicates are in good order and support the bid correction, or Cooper's explanation as to how the mistake occurred. Instead, Reliable primarily

argues that Cooper did not make the mistake claimed, but is attempting to recover other costs omitted from its bid associated with the direct digital control work under the contract. In this regard, Reliable asserts that the IFB required a particular manufacturer's direct digital control components and that Cooper could not have obtained a quote from this manufacturer at the time it submitted its bid because the manufacturer did not quote prices to vendors until the day of bid opening. Reliable contends that Cooper's worksheets indicated a substantial underbid for this manufacturer's equipment, as indicated by the quote Reliable obtained from the manufacturer. In addition, Reliable argues that the \$396,000 on the worksheet that is attributed to the base bid electrical work is in excess of the reasonable costs of this aspect of the work. Therefore, Reliable questions the reliability and validity of Cooper's claimed mistake.

In reviewing whether an agency acted properly in permitting the upward correction of a bid, it is not appropriate to question the precise methodology by which a bidder undertakes to calculate its bid, even where items seemingly are excessively or under priced. Id. at 3; PK Contractors, Inc., B-205482, Apr. 22, 1982, 82-1 CPD ¶ 368 at 4. Our concern is whether the worksheets provide a reasonable basis for the agency's conclusion that there was clear and convincing evidence of the mistake and the intended bid. Holmes Mechanical, Inc., supra, at 3.

Our review shows that Reliable's contentions are premised on apparent differences between the methodology by which it calculated its bid as opposed to how Cooper calculated its bid, as well as on an apparent misinterpretation of the IFB specifications. In this regard, EPA reports (and our review confirms) that the IFB does not require the direct digital control components to be supplied by a particular manufacturer. Agency Supplement Report at 4-5. Also, Cooper explains that the costs that Reliable believed to be the total direct digital control costs reflected in Cooper's worksheets did not include certain installation and electrical work, which were included in Cooper's cost for the electrical work of the base bid. Id., attach. 2, at 4-5. Reliable has not refuted the agency's and Cooper's explanations, which we find reasonable. Therefore, there is no basis on this record to challenge the bid correction.

The protest is denied.

Comptroller General
of the United States