



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Gulf-Atlantic Constructors, Inc.

File: B-289032

Date: January 4, 2002

William D. Coleman, Esq., Capell & Howard, for the protester.
Karl Dix, Jr., Esq., and Blair A. Andrews, Esq., Smith, Currie & Hancock, for Advance Construction Services, Inc., an intervenor.
Edward T. Goldstein, Esq., and Joseph A. Gonzales, Esq., Army Corps of Engineers, for the agency.
Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision to allow awardee to upwardly correct its low bid is denied where it was not unreasonable for the agency to conclude that the awardee had presented clear and convincing evidence of the claimed mistake and the intended bid.

DECISION

Gulf-Atlantic Constructors, Inc. protests the award of a contract to Advance Construction Services, Inc. under invitation for bids (IFB) No. DACA01-01-B-0003, issued by the U.S. Army Engineer District, Mobile, Alabama, to upgrade road access at Hurlburt Field Air Force Base, in Florida. Gulf-Atlantic argues that the Army improperly permitted Advance to make an upward correction of its apparent low bid.

We deny the protest.

The Army issued the IFB on May 14, 2001, contemplating the award of a fixed-price contract for the required services. Bidders were required to submit unit prices for each of nine contract line item numbers (CLIN) (the base bid) and a subtotal base bid amount; unit and subtotal prices for each of three option items; and a grand total price. Agency Report (AR) exh. 4.G, IFB Schedule.

Four firms, including the protester and the awardee, submitted bids by the time set on August 14, 2001. Total bid prices ranged from \$5,163,920 to \$8,695,227; Advance submitted the apparent low bid, and Gulf-Atlantic's bid was second low. The following table shows the prices Advance and Gulf-Atlantic submitted and the independent government estimate (IGE):

CLIN	Advance	Gulf-Atlantic	IGE
1	\$2,445,000	\$2,591,645	\$2,523,032
2	28,000	21,200	26,312
3	45,000	39,660	49,207
4	45,000	52,720	48,534
5	825,000	1,025,550	1,184,414
6	65,000	8,600	6,266
7	400,000	240,885	143,257
8	145,000	62,000	263,990
9	15,000	15,490	11,047
Subtotal	\$4,113,000	\$4,057,750	\$4,256,059
Option 1			
10	\$375,000	\$1,528,890	\$1,112,441
11	36,000	28,800	33,213
Subtotal	\$411,000	\$1,557,690	\$1,145,654
Option 2			
12	533,920	\$1,743,405	\$1,586,209
13	18,000	10,735	13,019
Subtotal	\$551,920	\$1,754,140	\$1,599,228
Option 3			
14	175,000	281,765	213,453
15	13,000	6,365	48,534
Subtotal	\$188,000	\$288,130	\$ 261,987
Options Subtotal	\$1,150,920	\$3,599,960	\$3,006,869
Grand Total	\$5,163,920	\$7,657,710	\$7,262,928

AR exh. E, Bid Abstract; U.S. Army Corps of Engineers, Mobile District Webpage at <http://www.sam.usace.army.mil>.

The contracting officer (CO) suspected a mistake in Advance's bid. In particular, the CO noted that there was an apparent calculation error in Advance's base bid subtotal: when added correctly, CLINs 1-9 totaled \$4,013,000, rather than \$4,113,000, as Advance had entered as its base bid subtotal. Pursuant to Federal Acquisition Regulation (FAR) § 14.407, the Army requested that Advance verify all line items and its total bid amount. AR exh. F, Letter To Advance from Mobile District Chief, Arch.-Eng'g (A-E) & Constr. Branch, Aug. 16, 2001. In that letter, the Army noted that Advance's total bid was more than 20 percent below the government's estimate, and significantly lower than Gulf-Atlantic's second-low bid (\$7,657,710) and the third-low bid (\$7,948,000).

In response to the Army's verification request, Advance claimed that it had made a mistake in its bid, explaining as follows:

The wrong numbers were read from a printed spreadsheet when Bid Item Nos. 10, 12, and 14 were written on the face of the bidding schedule included with our bid. A spreadsheet workpaper was used which only included the pricing for the subcontractors and suppliers for those items. Those workpapers were mistakenly used rather than the workpapers that contained the total price for those line items and which were included in the spreadsheet.

AR exh. D, Advance Letter to Chief, A-E Constr. Branch, Aug. 17, 2001, at 1.

In support of its request for correction, Advance submitted affidavits from Advance's Project Manager (PM), who was responsible for estimating Advance's bid, and from Advance's Office Manager (OM). Advance also provided copies of eight separate Microsoft/Excel spreadsheets containing the calculations and the subtotal price for the base bid (spreadsheet No. 1); the calculations and subtotal prices for CLINs 10, 12, and 14 for the three option items (spreadsheet Nos. 2, 3, and 4); and the calculations and subtotal material supplier and subcontractor prices for the base bid and the three options (spreadsheet Nos. 5, 6, 7, and 8).

Advance also provided a revised bid schedule with its corrected prices. With respect to the base bid, Advance added \$50,000 to each of CLINs 1 and 5, for a base bid subtotal increase of \$100,000, making its total base bid add up to \$4,113,000—the amount Advance had written in the space provided in the schedule for the base bid subtotal. Advance also submitted revised prices of \$1,131,924.91 for CLIN 10; \$1,094,447.01 for CLIN 12; and \$412,669.04 for CLIN 14, for an increase of \$1,555,120.96 to the option items, making Advance's revised option price subtotal \$2,639,040.96, and raising Advance's grand total bid to \$6,819,040.00.

The Army reviewed Advance's correction request and determined that Advance's calculation error with respect to its base bid subtotal was not de minimis. In this connection, the Army found that Advance had provided no explanation for the \$100,000 discrepancy in its base bid subtotal. Instead, in its revised bid schedule, Advance simply increased CLINs 1 and 5 by \$50,000 each, without providing any explanation. With respect to the base bid subtotal, the Army concluded that it was clear from totaling CLINs 1-9 that the correct subtotal for Advance's base bid was \$4,013,000 (i.e., not including the additional \$100,000 Advance submitted in its corrected bid schedule), and disallowed the upward adjustment to Advance's subtotal base bid.¹

¹ The \$100,000 correction request is not at issue in this protest. We note, however, that, given that Advance provided no evidence or support in its correction request for increasing the sum of the line items comprising its base bid subtotal price, the
(continued...)

With respect to Advance's request for upward correction of CLINs 10, 12, and 14, the Army found that the documents Advance submitted with its correction request evidenced that Advance had made mistakes in preparing its bid, and the manner in which the mistakes occurred. Division Engineer Decision, Sept. 7, 2001. Accordingly, the Army informed Advance that it would be allowed to correct its bid upward to \$6,719,040.96 (i.e., without the \$100,000 upward adjustment to Advance's base bid price), or the firm could withdraw its bid. By letter dated September 12, Advance accepted award at the allowed corrected price. This protest to our Office followed.

A bidder who seeks upward correction of its bid after bid opening but prior to award must submit clear and convincing evidence that a mistake was made, and the intended bid price. FAR § 14.407-3(a); C Constr. Co., Inc., B-253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198 at 2. The exact amount of the intended bid need not be established, provided that 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. C Constr. Co., Inc., supra. For an upward adjustment of a bid, workpapers, including hard copy printouts of computer-generated software spreadsheets/worksheets, may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id. at 2-3. Whether evidence of the intended bid amount meets the clear and convincing standard is a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Id. at 3. Here, as explained below, we think that the Army's conclusion that Advance provided clear and convincing evidence of the mistakes, and that Advance's grand total bid could be determined within a narrow range of uncertainty, was not unreasonable.

According to Advance's PM's affidavit, he finalized the electronic spreadsheet he was using to calculate Advance's bid prices for this solicitation on the morning of Monday, August 13 (the day before bid opening). The PM states that he was also preparing Advance's bid on another large project. As bid opening for that other project was scheduled for Wednesday, August 15, in Tampa, Florida, the PM drove to Tampa to complete his estimate for that project. AR exh. D, PM Affidavit, Aug. 17, 2001, ¶ 6.

The PM explains in his affidavit that he printed out the worksheet and left it on the OM's desk with a note instructing her to "check the arithmetic of these bids as well as to include" any last minute subcontractor or supplier prices she might receive

(...continued)

Army reasonably concluded that Advance had not provided clear and convincing evidence that it intended to include the additional \$100,000 in its base bid price.

prior to bid opening. Id. ¶ 7. On the morning of August 14 (bid opening day), he received a telephone call from Advance's OM, and asked her to read the numbers for the bid line items from the worksheets. Id. ¶ 8. The PM then entered those numbers on the bid schedule, and provided the completed bid package to Advance's vice president (VP), who signed and sealed the bid without making any changes. On bid opening day (August 14), Advance's VP then drove to Brewton, Alabama, picked up the OM and together they drove to Mobile, Alabama to deliver Advance's bid on the instant project. Id. ¶ 9.

In his affidavit, the PM explains that the Microsoft/Excel spreadsheets he used in preparing the bid consisted of eight separate worksheets, which appear in the record labeled as sheets Nos. 1 through 8. As already explained, worksheet No. 1 shows the calculations for the total base bid price under the column heading "Total Job Costs," of \$4,113,004.70. The record shows that that total matches Advance's the subtotal price Advance submitted for the base bid item (rounded down to \$4,113,000).

Spreadsheet No. 2 shows the calculations and a subtotal price of \$1,131,924.91 under the column heading "Total Job Costs" for option No. 1. However, Advance did not enter that figure on its bid schedule. Instead, Advance submitted a price of \$375,000 for CLIN 10 and \$36,000 for CLIN 11, for a subtotal of \$411,000 for bid option No. 1. Spreadsheet No. 3 shows the calculations and a subtotal bid price of \$1,094,447.01 under the column heading "Total Job Costs" for option No. 2. Advance did not enter that price in its bid, instead entering \$533,920 for CLIN 12 and \$18,000 for CLIN 13, for a subtotal of \$551,920 for option No. 2. Finally, sheet No. 4 shows the calculations and a subtotal price of \$1,094,447.01 for option No. 3. Advance actually entered \$175,000 for CLIN 14 and \$13,000 for CLIN 15, for a subtotal of \$188,000 for option No. 3. AR exh. F, Advance's Uncorrected Bid.

The PM states that in addition to the spreadsheets (identified above as sheets No. 1, 2, and 3), he broke out the individual CLINs using other sheets to calculate the pricing of supplier and subcontractor quotes to keep abreast of the most up-to-date quotations. AR exh. D, supra, ¶ 21. In this regard, the record shows that spreadsheet No. 5 contains subcontractor and supplier quotations for option No. 1, showing under the heading "Total Mat. Costs," the sum of \$375,060.20. According to the PM, that was the number the OM read to him over the telephone, which he then inserted for CLIN 10 (rounded down to \$375,000). Worksheet No. 6 shows the subcontractor and supplier quotations for option No. 2 totaling \$533,921.20. According to the PM, that was the amount the OM read to him over the telephone, which he inserted as Advance's bid for CLIN 12 (rounded down to \$533,920). Worksheet No. 7 shows the subcontractor and supplier quotations for option No. 3 totaling \$174,922.07. According to the PM, that was the figure the OM read to him over the telephone, which he then submitted as Advance's price for CLIN 14 (rounded up to \$175,000).

The PM concludes in his affidavit as follows:

Apparently, [the OM] was reading the numbers from the wrong sheets when she read me the numbers for each of the bid options. I had intended to include as a total price for bid option numbers one, two, and three, the numbers from sheets two, three and four from my spreadsheet. Instead, [the OM] read me the numbers from sheets five, six, and seven of the spreadsheet which only contained the pricing for the subcontractor and supplier quotations. I intended to include the pricing for the bid option items which were on sheets two through four.

AR exh. D, PM Affidavit ¶ 25.

Consistent with the PM's explanation, Advance's correction request stated that the prices the firm intended to submit for CLINs 10, 12, and 14 were the total prices shown on spreadsheets No. 2, 3, and 4 of \$1,131,924.91, \$1,094,447.01, and \$412,669.04, respectively, and not the figures from sheets 5, 6, and 7, which contained only subcontractor and material supplier costs.

In her affidavit in support of Advance's correction request, the OM states as follows:

Sometime [after bid opening], it was discovered that I had mistakenly given [the PM] the numbers from the spreadsheet which only contained the supplier and subcontractor pricing but did not contain [Advance's] pricing for the work. When I read [the PM] the numbers to insert on the bid schedule, I had both numbers in front of me and mistakenly provided him the wrong numbers.

AR exh. D, OM Affidavit ¶ 11.

At a hearing conducted by our Office, however, the OM stated that in a telephone conversation, the PM had specifically asked her to give him the totals from sheet Nos. 5, 6, and 7 only (Video Transcript (VT) 8:52), which were the figures for the material suppliers for options 1, 2, and 3 (VT 8:57, 9:06, 9:11; 9:13).²

² Prior to the hearing, counsel for Advance and the Army advised that the PM was no longer employed by Advance, and that he would be unable to attend the hearing. Instead of the PM, we permitted Advance to produce at the hearing its VP, whose testimony, which we found credible, was useful in providing an overall explanation of how Advance generally develops its estimates, compiles subcontractor quotations, and prepares its bids. We also obtained testimony from the OM, who explained in greater detail the telephone conversation she had with the PM on the morning of bid opening regarding Advance's bid.

In its post-hearing comments, Gulf-Atlantic argues that Advance made no error in completing its bid, thus implying that Advance's original bid was its intended bid. In this connection, the protester points out that since the OM testified that the PM specifically asked her for the figures on sheets 5, 6, and 7, and she read to him precisely what he asked for, there was no mistake.

We recognize the inconsistencies and gaps in the record that Gulf-Atlantic focuses on, and we believe that the Army could have reasonably decided to deny Advance's correction request. Nonetheless, because the Army decided to allow correction, we cannot sustain the protest unless we conclude that the Army's decision was unreasonable. Although we view this as a close call, we conclude that the Army's action was not unreasonable.

Regardless of which numbers the PM asked the OM to provide him, the fact remains that the spreadsheets (whose authenticity the protester does not challenge) can reasonably be viewed as clear and convincing evidence that the numbers entered on Advance's bid as the prices for CLINs 10, 12, and 14 were mistakes, since the spreadsheets identify those numbers as total material costs.³ The Army could also, not unreasonably, view the spreadsheets as clear and convincing evidence of the intended prices for those line items, since they plainly set out, as total job costs for the option years, the figures that Advance identified as its intended option-year bids. Under these circumstances, we cannot conclude that the Army's decision to allow correction of Advance's bid was unreasonable.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Gulf-Atlantic notes various inconsistencies in the documents Advance submitted in support of its correction request, and thus questions whether the worksheets are in good order. In this connection, the Army identified several discrepancies in the worksheets supporting Advance's subtotal prices, particularly with respect to option Nos. 1 and 3. AR exh. 3, supra, ¶ 19. While the agency acknowledged these discrepancies, it concluded, and the record shows, that any total price differences resulting from the discrepancies (approximately \$652.80), were de minimis relative to Advance's intended grand total bid price. We have no reason to question the Army's conclusion in this regard.