

Vogant



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Virginia Beach Air Conditioning Corporation

File: B-237172

Date: January 19, 1990

DIGEST

Agency improperly permitted correction of bid containing discrepancy between arithmetic total of line item prices and grand total price indicated in bid where either price reasonably could have been intended, and only one of which was low. Agency may not rely upon bidder's worksheets to determine which price was intended since the request for correction is considered as resulting in displacing a lower bid.

DECISION

Virginia Beach Air Conditioning Corporation (Virginia Air), protests the award of a contract to Mar Tech Mechanical, Ltd. t/a Gill Refrigeration & Air Conditioning (Gill), under invitation for bids (IFB) No. DTCG41-89-B-00008, issued by the United States Coast Guard Reserve Training Center, Yorktown, Virginia. The IFB was for the renovation and modification of the heating and air conditioning systems of a Coast Guard building at Yorktown. Virginia Air asserts that the Coast Guard improperly permitted Gill to correct an apparent mistake in its bid, thereby displacing Virginia Air as the low bidder. We sustain the protest.

The IFB, issued on July 5, 1989, called for bids on five line items (one base bid and four additive bids), in lump-sum subtotals, as well as a "grand total" for line items 1 through 5. The IFB stated that the low bidder would be the responsible bidder offering the low aggregate amount for line item 1 plus those additive line items providing the most features within the funds available.

Twelve bids were opened on September 6. Gill, the apparent low bidder, submitted the following bid:

047558/140462

<u>Line Items</u>	<u>Amounts</u>
1	\$488,000
2	2,900
3	32,350
4	68,900
5	370,380
Grand Total:	\$488,000

Gill also inserted the figure of \$488,000 in block 17 of Standard Form (SF) 1442 (solicitation cover sheet) as its price for the "work required." (The correct arithmetical total of the line item prices listed in Gill's bid was \$962,530). Virginia Air bid \$571,886. Immediately after bids were opened and read, Gill requested correction of its bid, stating that it had misinterpreted the instructions for completing the bid schedule and that line items 1 and 5 were incorrect but that its grand total of \$488,000 was its correct total bid.^{1/}

The contracting officer requested and received Gill's worksheets. Gill pointed out that its worksheets showed a total proposed price of \$505,767 and also showed that this figure had been reduced to \$488,200 shortly before bid opening. Gill stated that line item 1 mistakenly included all items and that line item 5 was also in error. The contracting officer admittedly could not determine from the worksheets Gill's intended prices for line items 1 and 5 because Gill had estimated the job as a whole without breaking the figures into individual line items. The contracting officer did determine that the worksheets clearly showed a maximum price of \$517,815 for all the work, subsequently reduced, consistent with the grand total in Gill's bid of \$488,000. Since the price of \$488,000 was considered reasonable, and since this figure appeared several times in Gill's bid, the contracting officer permitted correction after a meeting with Gill representatives in which they explained their allocation of costs to

^{1/} Gill allegedly entered the grand total in line item 1 because of a misinterpretation of IFB language. Specifically, SF 1442 described the total work to be performed as renovation and modification of the heating and air conditioning systems "in accordance with Sections A through J" of the IFB. Line item 1 had a similar description to perform the work "in accordance with . . . Section J." This allegedly confused Gill. No other bidder was misled. Gill submitted a bid bond total of \$99,600 (20 percent of bid price) which was consistent with a bid of \$488,000.

line items 1 and 5 based on raw data in the worksheets.^{2/}
The contracting officer accepted the explanations and approved the following corrected bid:

<u>Line Items</u>	<u>Amounts</u>
1	\$218,860
2	2,900
3	32,350
4	68,900
5	164,990
Grand Total:	\$488,000

After permitting correction (approved by the head of the contracting activity), the agency awarded the contract to Gill for all line items since sufficient funds were available. After Virginia Air filed this protest with our Office within 10 calendar days of award, the agency permitted the performance of the contract to proceed based on a "best interest" determination.

The agency argues that Gill made a bona fide error in two line items which were both "obvious" mistakes and that therefore "[v]iewing [Gill's] worksheets . . . was correct and professional." The agency argues that the grand total of \$488,000 was shown on the face of Gill's bid in no less than three places, and is "backed up" with a bid bond consistent with the figure. Therefore, the agency concludes that, read as a whole, the \$488,000 figure was Gill's intended bid, as confirmed by its worksheets, and that therefore no displacement occurred in correcting the bid. We do not agree.

The Federal Acquisition Regulation (FAR) provides that apparent clerical mistakes may be corrected by the contracting officer before award, such as the obvious misplacement of a decimal point, obviously incorrectly stated discounts or obvious mistakes in the designation of a unit. FAR § 14.406-2 (FAC 84-12). Additionally, the FAR provides for correction of other mistakes disclosed before award; however, if correction would result in displacing one or more lower bids, such a determination may not be made unless the existence of the mistake and the bid actually

^{2/} As stated above, the worksheets themselves did not show any allocation of costs to specific line items in Gill's bid.

intended are ascertainable substantially from the invitation and the bid itself. FAR § 14.406-3 (FAC 84-12).

These regulations permit correction where a discrepancy admits to only one reasonable interpretation that is ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic or experience. See Hudgins Constr., Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, and only one of which is low, the bid must be rejected since the request for correction is considered as resulting in displacing a lower bid. See Argee Corp., 67 Comp. Gen. 421 (1988), 88-1 CPD ¶ 482. In making such determinations, the agency may not rely upon the bidder's worksheets. Russel Drilling Co., 64 Comp. Gen. 698 (1985), 85-2 CPD ¶ 87.

Here, in our view, there is no obvious or apparent explanation for the discrepancy on the face of Gill's bid between the stated grand total and the true mathematical total of the five line items in question. For example, Gill showed a bid of \$488,000 for line item 1. Some of the other bidders offered \$598,000, \$514,225, and \$479,000 for line item 1. Thus, in view of the range of prices received, Gill's bid for line item 1 was reasonably susceptible of being interpreted as its intended price for the line item from the face of its bid. Similarly, the true mathematical total of Gill's bid was \$962,530. Some of the other bidders offered \$976,000, \$942,373, and \$824,457 for the total work. Thus, Gill's bid could also be reasonably interpreted as offering the true mathematical total.^{3/} Thus, Gill's bid may reasonably be interpreted as intending either of two prices, and the bid actually intended cannot be determined without the benefit of advice from the bidder.

The record also shows that the agency placed substantial reliance on Gill's worksheets to determine that its total intended price was in the range of \$500,000.^{4/} As stated

^{3/} The fact that Gill entered the "grand total" figure in SF 1442 and obtained a bid bond consistent with that amount may be reasonably construed as a simple "carry-over" of an erroneous figure in the bid schedule.

^{4/} In fact, the agency immediately requested worksheets from Gill, and it is highly unlikely that the agency would have permitted correction without the information gleaned from the worksheets.

above, since the circumstances can be reasonably construed as involving the displacement of a lower bidder, the agency should not have permitted Gill to submit its worksheets. Accordingly, the protest is sustained.

We therefore are recommending to the Coast Guard that Gill's contract be terminated for the convenience of the government, and that award be made to Virginia Air, if otherwise appropriate.

We point out that our recommendation is made without regard to the extent of contract performance to date, since performance has proceeded despite the protest filing. Where, as here, a federal agency receives, within 10 days of the date of contract award, notice of protest filing under the statutory bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (Supp. IV 1986), the agency must suspend performance of the contract until the protest is resolved. 31 U.S.C. § 3553(d)(1). The only exceptions are where the head of the responsible procuring activity makes a written finding that either contract performance is in the best interest of the United States, or there are urgent and compelling circumstances significantly affecting the interests of the United States which do not permit waiting for a decision, and so notifies this Office. 31 U.S.C. § 3553(d)(2)(A), (B). Further, the statute requires that our Office, in making a recommendation in connection with the resolution of a bid protest, disregard any cost or disruption from terminating, recompeting, or reawarding the contract if the head of the procuring agency determines to proceed with contract performance, as here, on the basis of the best interest of the United States. 31 U.S.C. § 3554(b)(2).

Accordingly, we make our recommendation irrespective of any factors other than that contract award was improper. We also find the protester to be entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1989). Virginia Air should submit its claim directly to the agency.

Milton J. Fowler
for Comptroller General
of the United States