

Coary  
Stephens



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Gunco, Inc.  
**File:** B-238910  
**Date:** July 17, 1990

David R. Hazelton, Esq., and Neil K. Shapiro, Esq., Latham & Watkins, for the protester.  
David W. LaCroix, Esq., Department of the Navy, for the agency.  
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that contracting agency improperly denied protester's request for upward correction of its low bid is sustained with respect to one line item of the completed bid schedule, where worksheets provide clear and convincing evidence of a mistake and of the intended bid for the item.
2. Protest that agency improperly denied requested correction of its bid price for a line item is denied, where protester prepared three different worksheets addressing the item, and it is not clear that the one worksheet indicating the allegedly intended item price in fact reflects protester's intended item price; agency therefore reasonably concluded that protester failed to show that the bid price was not intended.

### DECISION

Gunco, Inc. protests the Department of the Navy's denial of its pre-award request to correct alleged mistakes in its low bid under invitation for bids (IFB) No. N62474-89-B-1695, for structural repairs to a pier at the San Diego Naval Station in California. Gunco asserts that the Navy acted improperly in denying the full upward adjustment in its bid price that Gunco requested, in light of the clear and convincing evidence of the intended bid.

We sustain the protest in part and deny it in part.

## BACKGROUND

As issued, the IFB instructed bidders to provide prices for items (a) through (t) in the blanks provided in the solicitation's printed bid schedule. Items (a) and (t) are in issue here. Item (a) was to be the firm, fixed, lump-sum price for all work not included in the remaining items, and item (t) was to be the price for surface-blasting the concrete deck of the pier to prepare it for the application of a concrete sealant. For item (t), the IFB called for both unit and extended prices. Although the printed bid schedule provided for the unit price to be stated on a per square foot basis, the schedule specified the total area to be surface-blasted as 2,850 square yards. Consequently, to calculate the extended price, the bidder first had to multiply its unit price by a factor of 9 (the number of square feet per square yard), then multiply that product by 2,850 square yards. Although amendments 1 and 5 to the IFB attempted to simplify the process by advising bidders to provide their unit prices on a square yard basis, the Navy did not issue a revised bid schedule; accordingly, the IFB as amended still included a bid schedule that designated the unit price as a per square foot price.

Of the eight bids submitted, Gunco's was the apparent low at \$688,793, compared to the next low bid of \$933,313 and the government estimate of \$1,327,613. Gunco acknowledged amendments 1 and 5, but entered all of its bid prices on the unchanged printed bid schedule; consequently, Gunco's \$0.29 unit price for item (t) appeared as a price per square foot. Multiplying \$0.29 by a factor of 9 to convert the figure to square yards, and then multiplying the product by the specified 2,850 square yards, results in an extended price of \$7,438.50, Gunco's bid for item (t). For item (a), Gunco bid \$41,611.

Since Gunco's bid was considerably lower than the other bids, the Navy suspected a mistake and requested verification from Gunco. Gunco claimed its bid was mistaken and provided a worksheet to the Navy that the firm believed indicated that the \$41,611 price for item (a) should have been \$114,150 higher, or \$155,761. The firm submitted another worksheet to show that, for item (t), Gunco had misplaced the decimal point in transferring both the unit and extended prices for item (t) from the worksheet to the bid schedule. Instead of the prices of \$0.29 and \$7,438.50 that Gunco had entered on the bid schedule for item (t), the worksheet indicated prices of \$2.90 and \$74,385.

## ANALYSIS

Generally, under Federal Acquisition Regulation § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Price/CIRI Constr., B-230603, May 25, 1988, 88-1 CPD ¶ 500. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision unless it lacks a reasonable basis. Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571. For upward correction of a low bid, 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. Id.

### Item (t)

The Navy allowed only a minor increase for item (t), from \$7,438.50 to \$8,265. On the basis of the relationship of Gunco's bid to the general pattern of prices for the item, the Navy determined that Gunco clearly had made a mistake in the item (t) unit price; compared to Gunco's unit price of \$0.29, which, as discussed below the Navy viewed as a per square yard price, the government estimate was \$2.50 per square yard, and the other bids ranged from a low of \$4.60 to a high of \$35 per square yard. Based on this disparity and the fact that Gunco's worksheet clearly showed a unit price of \$2.90, the agency concluded that Gunco had in fact misplaced the decimal point in transferring its unit price from the worksheet, and that the correct bid price was the worksheet price of \$2.90 instead of the \$0.29 entered on the bid schedule.

However, the agency disallowed correction of the extended price, claiming that it was not persuaded that Gunco's item (t) price was a square yard price. In support of its position, the Navy asserts that Gunco's method of calculating the extended price results in an unrealistically high unit price of \$26.10 per square yard (\$2.90 per square foot multiplied by a factor of 9); according to the Navy, that price is so much higher than the unit prices of other bidders and the government estimate that it could not possibly have been the price intended by Gunco.

We find that the Navy's denial of the full correction requested by Gunco lacked a reasonable basis. We agree with the Navy's determination that the intended unit price was \$2.90; the worksheet entry is clear and is not contradicted

by other information in the record. We disagree, however, that the extended price shown on Gunco's worksheet could not have been the price intended because it was unrealistically high.

Gunco's bid schedule itself and the worksheet support Gunco's claim of square foot pricing. The extended price on the bid schedule was derived from the erroneous unit price by multiplying the unit price by the conversion factor of nine; since such a formula would be required only if the unit price was stated as a square foot price, we see no basis for presuming that the unit price was already a square yard price. This result is confirmed by the worksheet. The extended \$74,385 price, based on multiplying by the conversion factor of 9, appears on the worksheet immediately adjacent to the unit price that the Navy concedes was mistaken. It seems to us incongruous to accept the validity of the worksheet as an indication of the intended unit price, but then reject it as evidence of the extended price.

We do not agree with the Navy that the array of bids undermines the alleged item (t) mistake. The Navy's abstract of bids shows that none of the bids was consistent with the government's estimate of \$2.50 per square yard; even the lowest bid was almost twice as high. Moreover, a price of \$26.10 per square yard, rather than being entirely out of line with other bids, as the Navy suggests, in fact falls approximately half-way between two other bids for item (t), one for \$18 and one for \$35 per square yard. Although the remaining bids (\$14, \$4.60, \$9, \$6.94, and \$6.40 per square yard) were closer to the estimate, we do not think they establish a clear pattern sufficient to warrant ignoring the unequivocal evidence in Gunco's worksheets and bid schedule.

We conclude that the evidence presented reasonably establishes that Gunco intended a unit price of \$2.90 per square foot. Consequently, we find that Gunco is entitled to an upward correction of its extended price for item (t) from \$7,438.50 to \$74,385.

#### Item (a)

The Navy denied Gunco's requested item (a) correction in its entirety. Gunco has submitted additional worksheets and affidavits to support its assertion that its item (a) bid price was mistaken and that another price was intended. According to Gunco, although the worksheet discussed above (worksheet 1) indicated a price for item (a) of \$41,611-- that is, the price that Gunco actually bid for the item--

prepared for item (a) alone. Specifically, Gunco states that after it prepared worksheet 1 it reviewed the solicitation requirements more closely and realized that the IFB required independent inspections to be paid for by the contractor. Gunco then allegedly prepared Worksheet 2 to reflect the additional cost of providing for inspections.

Worksheet 2, which is headed "Item (a) Review," lists prices for 5 line items. The total of the first 4 items equals Gunco's bid price of \$41,611; the fifth item, for \$114,150, is labelled "Additional . . . [Inspection] Cost." The total for all 5 line items, \$155,150, is connected by an arrow to the notation, "Put in place wrong # bid item breakdown." According to Gunco, although it mistakenly transferred the original \$41,611 price from worksheet 1 to its bid schedule instead of the revised, higher price shown on worksheet 2, the latter worksheet provides clear and convincing evidence of the mistake in bid and of Gunco's intent to bid \$155,150 for item (a).

The Navy, in its administrative report, expressed concern about the lack of any documentation of how Gunco derived its original \$41,611 price on worksheet 1. In response to that concern, Gunco has submitted a third worksheet (worksheet 3) which, according to the protester, it located only after receiving the Navy's report. Worksheet 3, according to Gunco, was used in calculating the \$41,611 price for item (a) included in worksheet 1; consequently, although it was the last to be submitted, it was the first of the three that Gunco states it prepared in formulating its bid (all three worksheets are undated). Worksheet 3 has four line items and associated dollar amounts that correspond to the first four line items and dollar amounts on worksheet 2. The total for the four line items is \$41,611, and under the total is the notation, "Requires additional inspt.," with an arrow pointing to the total.

We find that the Navy reasonably disallowed correction of item (a). As the Navy points out, there are unexplained inconsistencies regarding the various worksheets that raise doubt as to whether Gunco intended to bid a higher price for item (a). First, although worksheet 3 allegedly was prepared prior to worksheet 1 and contains the clear notation that additional inspection was required, Gunco nevertheless entered the total of \$41,611 on worksheet 1 and the bid schedule, rather than a revised figure that reflected inspection costs. Gunco does not explain, and it is not apparent, how or why the worksheet 3 notation was ignored in transferring prices. Further, Gunco's statement that it discovered the need for the additional inspection cost after it had prepared worksheet 1 is belied by the

record; the notation on worksheet 3, which allegedly was prepared prior to worksheet 1, shows that Gunco was fully aware that additional inspection was required from the outset. Finally, these inconsistencies aside, it simply is not clear--either from the worksheet or from some other evidence--that Gunco intended to bid the higher price from worksheet 2 or the lower price from worksheet 1 or 3.

We conclude that this inconsistency as to when the alleged oversight regarding inspection costs was discovered, together with the failure of the undated worksheets to establish a rational chronology of the manner in which Gunco calculated its item (a) price, raises a degree of uncertainty as to Gunco's intended price for that item. Consequently, the Navy had a reasonable basis for concluding that the evidence submitted by Gunco is not clear and convincing and that the requested correction therefore should be denied. See generally Southwind Constr. Corp., B-228013, Oct. 8, 1987, 87-2 CPD ¶ 346.

#### RECOMMENDATION

In view of our finding that Gunco has submitted clear and convincing evidence of its mistake and intended bid with respect to item (t), Gunco's bid should be revised upward by \$66,946.50 (the difference between the mistaken bid of \$7,438.50 and the intended bid of \$74,385). Even though we have found that Gunco has not provided clear and convincing evidence of its alleged item (a) bid, so that correction of this item is not permissible, it is clear that Gunco's bid would be low (by at least 7 percent) with or without this additional correction. In this situation, Gunco may waive the item (a) mistake. Porterhouse Cleaning and Maintenance Service Co., Inc., B-225725, May 18, 1987, 87-1 CPD ¶ 522; National Heat and Power Corp., B-212923, Jan. 27, 1984, 84-1 CPD ¶ 125.

By letter of today to the Secretary of the Navy, we are recommending that Gunco be permitted to withdraw its bid or, at its option, to accept award at a corrected bid price of \$755,739.50, if otherwise proper. If Gunco accepts the award, it is entitled to reimbursement of its costs of pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1990).

The protest is sustained in part and denied in part.

*for*   
Comptroller General  
of the United States