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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ogden Allied Eastern States Maintenance

File: B-239550

Date: August 28, 1990

William A. Roberts III, Esq., Howrey & Simon, for the protester.
Robert S. Holtz, for Tate Facilities Service, Inc., and James L. Sherwood, for Halifax Engineering, Inc., interested parties.
Sharon A. Roach, Esq., General Services Administration, for the agency.
James Vickers, Esq., and Jonn Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of upward correction of low bid is denied where the record supports contracting agency's decision that there was clear and convincing evidence establishing both the existence of the mistake (transposing numbers from worksheets to bid form) and what the bid actually intended, and the bid is low with or without correction.

2. Contracting officer's failure to obtain sworn statements supporting existence of mistake and amount of intended bid prior to permitting correction is not fatal to correction since nature of mistake and amount of intended bid are clear from the worksheets, the face of the bid, and the other bids and statutory penalties which provide adequate protection against false statements or representations by bidder.

DECISION

Ogden Allied Eastern States Maintenance protests the award of a contract to Tate Facilities Service, Inc. by the General Services Administration (GSA) under invitation for bids (IFB) No. GS-11P-90-MJC-0019, for operation and maintenance services at two federal buildings in Washington, D.C. Ogden contends that GSA improperly permitted the correction of a mistake in Tate's bid.

We deny the protest.

The IFB was for a 3-year period and contained six line items consisting of various services to be performed, such as basic building maintenance services, elevator maintenance, and escalator maintenance. Each line item provided for a per month price which was to be multiplied by 36 to establish the total price. The low bidder was to be determined by the total 3-year price of all six line items. Line item 2A for basic services is the subject of the mistake claim.

Nine bids were opened on March 28, 1990. The three low bids were:

Tate	$1,368,696
Frank E. Basil, Inc.	$3,008,112
Ogden	$3,317,389

Basil's bid was determined by the agency to be nonresponsive because it did not offer the minimum bid acceptance period of 120 days.

Because Tate's bid was significantly lower than the other bids received, the contracting officer, on March 30, requested the firm to verify its bid by April 5. By letter of April 2, Tate advised the contracting officer that it had made a mistake in line item 2A of its bid and requested permission to withdraw the bid.

According to Tate's letter, the mistake occurred in transferring the price for line item 2A from its worksheets to the bid form. Tate states that it intended to bid line item 2A at $72,000 per month for 36 months, however, due to a transposition of numbers, $27,000 was entered on the bid form. Therefore, Tate's bid was $1,620,000 less than intended. Tate verified that its other line item prices were correct.

The contracting officer requested Tate to furnish its worksheets to support the claimed mistake. On April 5, Tate wrote another letter to the contracting officer requesting that the agency permit the bid to be corrected rather than withdrawn. Subsequently, Tate submitted its worksheets and a letter from its bonding company showing the bonding company's quote for the bid bond to be based on an estimated annual bid price of $1,500,000 or $4,500,000 for the 3-year contract.

The contracting officer reviewed the worksheets and confirmed that for line item 2A, Tate's worksheets showed a

total price of $2,593,323.53 for 36 months or $72,036.66 per month. Tate stated in its letter of April 5 that in arriving at its final price it "smoothed out" the $72,036.76 figure to $72,000.1/ The contracting officer determined that there was clear and convincing evidence of both the existence of the mistake and the bid actually intended and, on April 17, with the concurrence of GSA's Regional Administrator, permitted the correction of Tate's bid for line item 2A from $27,000 per month to $72,000. Tate's total bid price, as corrected, was then $2,988,696. On April 24, award was made to Tate with service to commence on June 1.

Ogden objects to the correction because in its view the materials submitted by Tate to support its mistake claim, which did not contain sworn statements from Tate personnel familiar with the bid preparation, and which included what the protester categorizes as contravening evidence in the form of a bonding company letter, did not establish clearly and convincingly the amount of the intended bid. The protester also argues that Tate should not have been permitted to alter its initial request for withdrawal to one for correction. We do not agree.

An agency may permit upward correction of a low bid when there is clear and convincing evidence to establish not only the existence of a mistake but also the bid amount actually intended. Federal Acquisition Regulation (FAR) § 14.406-3; Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. 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. Lash Corp., 68 Comp. Gen. 232, supra. In this respect, in considering upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order, indicate the existence of a mistake and the intended bid price, and there is no contravening evidence. Id.

As far as the lack of affidavits is concerned, there is simply no requirement that a mistake claim always be accompanied by sworn statements. The regulation states that mistake claims "must be supported by statements (sworn statements, if possible) and shall include all pertinent

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1/ The protester does not object to the rounding of the $72,036.76 to $72,000 and we think that this is consistent with normal practice in the preparation of bids and is not an impediment to correction in this case.

evidence" not that such claims "must" be supported by affidavits. See FAR § 14.406-3(g)(2).

Here, the worksheets furnished to GSA were accompanied by a notarized statement from the corporation's secretary attesting to the accuracy and completeness of the worksheets. The worksheets themselves were in good order and contained no discrepancies or uncertainties. Further, Tate's letters of April 2 and April 5 credibly explained the manner in which the error was made. We think that in the circumstances here, where the nature and the amount of the mistake was obvious from the worksheets, the bid schedule, and the prices bid by the other firms on line item 2A, the agency reasonably made its determination without the need for sworn statements. Moreover, the penalties prescribed by 18 U.S.C. § 1001 (1988) provide statutory protection against false statements or representations by a bidder. Schoutten Constr. Co., B-215663, Sept. 18, 1984, 84-2 CPD ¶ 318. Finally, we point out that Tate, subsequent to the correction of its bid, has furnished sworn statements from the individual who prepared the bid and the individual who typed the bid form, both of which support its original claim.

We do not agree with Ogden that the bonding company letter which stated that its quote was based on an estimated bid price of $4,500,000 for 3 years constituted contravening evidence so that the worksheets alone do not support the correction. Tate has explained that it requests a quote from its bonding company well in advance of finalizing its bid price and that it was able to reduce its bid price substantially from the estimate given the bonding company. This explanation is plausible and the letter does not, in our view, show that the price contained in Tate's worksheets was not the price intended. If the bid estimate in the letter shows anything relevant, it shows that Tate was contemplating a higher bid than it submitted and that in our view supports the existence of a mistake in the bid.

We also conclude that it is legally irrelevant that Tate altered its original request for withdrawal to one for correction. Ogden views this action by Tate as impugning the integrity of the competitive system by giving Tate a "third bite" at receiving the award. Under the regulations, an agency head or his delegee makes the final determination as to the resolution of a mistake claim and may decide to correct a bid and award the contract to the firm claiming mistake, even if the firm only asks for withdrawal, where the agency head determines that clear and convincing evidence exists as to the mistake and the intended bid and the bid, both as corrected and uncorrected, remains low. FAR § 14.406-3(b). Thus, the bidder is not in a position to

manipulate the system at his whim and thereby affect the integrity of the competitive procurement system.

Finally, Ogden contends that Tate's corrected bid is less than 1 percent below that of the next low bidder, and for that reason a higher evidentiary standard should be applied in this case. Even if Tate's bid, as corrected, were within 1 percent of the next low bid--which is not the case because Basil's bid is considered to be nonresponsive by GSA--we would not object to the agency's determination to allow correction since in our view there is no uncertainty about the nature of the mistake and the amount of the intended bid evident from the evidence submitted by Tate. See Conner Brothers Constr., Co. Inc., B-226232.2, Feb. 3, 1988, 88-1 CPD ¶ 103.

The protest is denied.

for James F. Hinchman
General Counsel