



Comptroller General
of the United States

502611

Washington, D.C. 20548

Decision

Matter of: Michaels Construction Company, Inc.

File: B-257764

Date: November 7, 1994

Sam Zalman Gdanski, Esq., for the protester.
K. Raymond Schmidt, for Max Contracting, Inc., an interested party.

Ann L. Giddings, Esq., Diane D. Hayden, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly permitted upward correction of awardee's low bid where the record contained clear and convincing evidence of both the mistake and the intended price.

DECISION

Michaels Construction Company, Inc. protests the decision of the Department of the Navy to permit Max Contracting, Inc. to correct a mistake in its low bid under invitation for bids (IFB) No. N62477-93-D-3658. The solicitation is for housing repairs at the Naval Surface Warfare Center in Indian Head, Maryland.

We deny the protest.

The IFB contemplated a fixed-price requirements contract. Bidders were required to submit unit and extended prices for 116 contract line items. Estimated quantities and a description of the units being acquired were provided for each line item. Line item No. 0042, for the removal and replacement of an estimated 700 linear feet of bi-fold closet doors, indicated that the applicable pricing "unit" was "PER FT OF OPENING WIDTH"; the units applicable to all other line items were expressed in terms of linear feet, board feet, square feet, or "each".

Seven bids were received by the January 4, 1994, bid opening date. The two lowest were Max's bid of \$656,907.50 and Michaels's bid of \$742,765.00. On January 11, Max claimed a mistake in its bid with respect to line item No. 0042 and

requested an upward correction. Max submitted worksheets in support of its claim which show that it had calculated its unit price as follows:

3'0" x 6'8" bi-fold doors	\$ 68.00
Paint	\$ 24.00
Labor for carpentry	\$ 28.00
Labor for painting	\$ 20.00
(Subtotal)	\$140.00
<u>20% overhead and profit</u>	<u>\$ 28.00</u>
Total per door	\$168.00

3'0" x 6'8" = 19.98 square feet

$\$167.90^1 / 19.98$ (square feet) = \$8.41

Max rounded the \$8.41 per square foot figure to \$8.50, and entered this as its unit price for item No. 0042, resulting in an extended price of \$5,950.00. In its mistake claim, Max noted that it erred in entering a unit price per square foot because the descriptive unit for item No. 0042 is linear feet of opening width, *i.e.*, 3'0. Thus, according to Max, the \$168.00 total per door should have been divided by 3 to arrive at a "correct" unit price of \$56.70,² which, when extended for 700 linear feet, the estimated requirement set forth in the IFB for this item, would yield an overall "correct" price of \$39,690.00. Max submitted a January 5 written quotation from its door supplier memorializing a pre-bid telephonic quotation of \$68.00 for a 3'0" x 6'8" door. The agency verified this information with Max's door supplier, recalculated the intended price for item No. 0042 to be \$39,200.00 and awarded a contract to the firm in the corrected amount of \$690,157.70, which remained significantly lower than Michaels's bid of \$742,765.00.

Michaels essentially argues that there is not clear and convincing evidence of either a mistake or of Max's intended price.

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) § 14.603-3(a); M. A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296. In considering the

¹The record does not explain why \$167.90 was used in lieu of \$168.00; however, the difference is immaterial.

²A correct calculation would yield a figure of \$56.00; again, the difference is immaterial.

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. Further, where a mistake has a specifically calculable effect on the bid calculation and that effect can be determined by a formula evident from the worksheets, the intended bid may be ascertained by taking into account the effects of the error on other bid calculations based on the mistaken entry, Id. Whether evidence--which may include sworn statements of the claimant--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. Id.

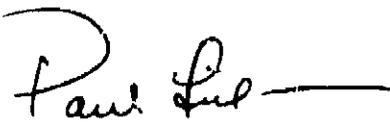
Here, the effect of using 19.98 square feet to calculate a unit price instead of the 3'0" linear feet representing the width of the doors called for in line item No. 0042 is readily apparent. Dividing Max's total price per door of \$168.00 by 3 to arrive at an appropriate unit price results in a per linear foot price of \$56.00, which, when multiplied by the estimated quantity of 700 linear feet results in an extended price of \$39,200.00--the amount the agency used to permit upward correction.

The protester's concerns appear to be twofold. First, Michaels asserts that the evidence supplied by Max is not clear and convincing because the worksheets and the supplier quotation are undated and unsigned. They are, however, supported by Max's sworn statement as to their authenticity--a type of evidence upon which the agency can properly rely. See M. A. Mortenson Co., supra. Further in this regard, the agency verified the authenticity of the quotation by contacting Max's supplier.

Second, Michaels states that the \$68.00 per door price is out of line with quotations from two of its own suppliers and that the corrected unit price is out of line with others received under the IFB. While these observations are correct, we do not find that they call into question the appropriateness of permitting the correction. A bidder's pricing of different elements of its bid is dependent upon the particular bidder's business circumstances, judgment, and bidding strategy, M. A. Mortenson Co., supra, and thus, comparative evaluations to the ability of other bidders to obtain lower-priced items from different suppliers are of little usefulness in the context of reviewing mistakes in bid. The record provides no reason to question the certified and verified price quotation from Max's supplier of \$68.00 per door, or Michaels's markup of this price to arrive at a total per door price of \$168.00. Since the

corrected price can readily be ascertained by using simple arithmetic to derive the appropriate unit price from the total door price, we see no reason to disturb the agency's decision to permit correction. Id.

The protest is denied.

for 
Robert P. Murphy
Acting General Counsel