



Comptroller General  
of the United States

237144

Washington, D.C. 20548

## Decision

Matter: Metric Construction Co., Inc.

File: B-259573

Date: April 13, 1995

John L. Radder, Esq., Dann, Radder, Williamson & Meacham, for the protester.  
Douglas L. Patin, Esq., Spriggs & Hollingsworth, for Kiewit Pacific Company, an interested party.  
Lester Edelman, Esq., and Danielle Conway-Jones, Esq., Department of the Army, for the agency.  
Jeanne W. Isrin, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency reasonably found that bid correction was improper where bid contained numerous discrepancies such that the bid was susceptible to several reasonable interpretations, not all of which would render the bid low, and the intended bid thus could not be determined from the face of the bid itself.

2. Solicitation provision stating that apparent errors in addition of lump-sum and extended prices shall be corrected does not, by itself, create a presumption that only one of several reasonable interpretations is necessarily correct; where bid contains numerous and varied errors which make it impossible to determine which prices were intended, provision does not apply to resolve the mistake.

### DECISION

Metric Construction Co., Inc. protests the termination of its contract (No. DACA83-94-C-0072) for convenience, and the award of a contract (No. DACA83-95-C-0003) to Kiewit Pacific Company under invitation for bids (IFB) No. DACA83-94-B-0028, issued by the Army Corps of Engineers for the construction of a service member support center and facilities at the Helemano Military Reservation, Oahu, Hawaii.

We deny the protest.

The solicitation contemplated award of a contract for construction of a 53,500-square foot service member support center building, an outdoor swimming pool and wading pool,

and a separate 19,300-square foot child development center. Specified portions of the project were to be funded by Military Construction, Army (MCA) funds and other portions were to be funded with non-appropriated funds (NAF). The solicitation bidding schedule contained a base schedule, which consisted of five line items--for a child development center (item 1), a chapel, family center and physical fitness center (item 2), locker, shower and toilet facilities (item 3), supporting facilities (item 4), and a youth center (item 7)--and three option items--for composite modules for the child development center (item 5), a parking lot (item 6) and a swimming pool facility (item 8). The bidding schedule also required bidders to enter figures for the "Total Bidding Schedule" (items 1 through 8), and subtotals for the "Total Base Schedule (MCA)," "Total Government Options (MCA)," "Total Base Schedule (MCA) plus Total Government Options (MCA)," "Total Base Schedule (NAF)," and "Total Base Schedule (NAF) plus Government Option (NAF)."

The IFB provided that award would be made to "the bidder offering the lowest total price to the Government for the Total Bidding Schedule including the Total Base Schedule (MCA), Total Base Schedule (NAF) and all Government options." The solicitation further provided, in a provision entitled "Arithmetic Discrepancies," that:

"(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

- (1) Obviously misplaced decimal points will be corrected;
- (2) In case of discrepancy between the unit price and extended price, the unit price will govern;
- (3) Apparent errors in extension of unit prices will be corrected; and
- (4) Apparent errors in addition of lump-sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the Government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, extensions, and totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids."

Eight bids were opened at the September 16, 1994, bid opening. As set forth below, in the space provided for the "Total Bidding Schedule" price, Metric entered two figures, \$15,698,443, and above that, \$16,349,872, either of which would be low. (Kiewit was the next low bidder at \$16,453,000 and the third low bid was \$16,816,000.) Metric's bid schedule was as follows:

METRIC BID

<u>ITEM</u> <u>NO.</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>AMOUNT</u>
<u>MILITARY CONSTRUCTION ARMY (MCA)</u>				
<u>BASE SCHEDULE (MCA)</u>				
1.	CHILD DEVELOPMENT CENTER	1	Job \$	3,952,788
2.	CHAPEL, FAMILY CENTER, & PHYSICAL FITNESS CENTER	1	Job \$	8,875,515
3.	LOCKER, SHOWER & TOILET FACILITIES			
3A.	MCA PORTION (63% of Bid Item 3C)	1	Job \$	240,395
3B.	NAF PORTION (37% of Bid Item 3C)	1	Job \$	144,184
3C.	TOTAL BID ITEM NO. 3 (3A + 3B)	1	Job \$	384,579
4.	SUPPORTING FACILITIES			
4A.	MCA PORTION (84% of Bid Item 4C)	1	Job \$	418,759
4B.	NAF PORTION (16% of Bid Item 4C)	1	Job \$	79,764
4C.	TOTAL BID ITEM NO. 4 (4A + 4B)	1	Job \$	498,523
TOTAL BASE SCHEDULE (MCA)				
(TOTAL OF BID ITEMS 1, 2, 3A & 4A)				\$13,708,405
<u>GOVERNMENT OPTIONS (MCA)</u>				
5.	CHILD DEVELOPMENT CENTER	1	Job \$	317,564
6.	PARKING LOT	1	Job \$	317,009
TOTAL GOVERNMENT OPTIONS (MCA)				
(TOTAL OF BID ITEMS 5 & 6)				\$ 634,573
TOTAL BASE SCHEDULE (MCA) PLUS TOTAL GOVERNMENT OPTIONS (MCA)				
(TOTAL OF BID ITEMS 1, 2, 3A, 4A, 5 & 6)				\$14,342,974
<u>NON-APPROPRIATED FUNDS (NAF)</u>				
<u>BASE SCHEDULE (NAF)</u>				
7.	YOUTH CENTER	1	Job \$	576,429
TOTAL BASE SCHEDULE (NAF)				
(TOTAL OF BID ITEMS 3B, 4B, & 7)				\$14,919,403

GOVERNMENT OPTION (NAF)

8. SWIMMING POOL FACILITY	1	Job \$ 1,486,969
TOTAL BASE SCHEDULE (NAF) PLUS		
GOVERNMENT OPTION (NAF)		
(TOTAL OF BID ITEMS 3B, 4B,		\$ 2,284,362
7 & 8)		
TOTAL BIDDING SCHEDULE		
(BID ITEMS 1 - 8)		\$16,349,872
		\$15,698,443

In examining Metric's bid, the contracting officer noted that it contained numerous discrepancies. Relying upon the above Arithmetic Discrepancies clause, the contracting officer reconstructed Metric's bid by assuming that the line item prices--items 1, 2, 3C, 4C, 5, 6, 7 and 8--were correct and that Metric had made arithmetic errors in totaling the line items for the total bid and subtotals; he concluded that the correct total bid amount was the sum of all line items, 1 through 8, or \$16,406,376. By letter of September 20, Kiewit filed an agency-level protest, claiming that Metric's bid was ambiguous and should be rejected as nonresponsive. During a September 27 conference call with the agency, and by letter of September 27, Metric confirmed that its intended bid was \$16,406,376. In its subsequent denial of Kiewit's protest, the Corps found that Metric's bid need not be rejected because there were only three possible interpretations of its intended bid--\$15,698,443 or \$16,349,872, the figures listed on Metric's bid schedule for the total bid, or \$16,406,376, the sum of line items 1 through 8--all of which were low. Furthermore, the agency found that Metric's bid was not ambiguous because Metric's intended total bid, \$16,406,376, could be determined by correctly adding the line items, pursuant to the Arithmetic Discrepancies clause of the IFB. Award was then made to Metric (contract C-0072) in the amount of \$16,406,376 for the base schedule and option items.

In response to Kiewit's request that the Corps reconsider its decision, the agency subsequently reversed its denial of Kiewit's protest. The Corps determined that Metric should not have been allowed to correct its bid because the bid contained numerous discrepancies and was subject to at least six reasonable interpretations, two of which would have rendered Metric's bid higher than the second-low bid. Concluding that Metric's bid was ambiguous and should have been rejected as nonresponsive, the Corps terminated Metric's contract for convenience and made award to Kiewit (contract C-0003). Metric thereupon filed this protest with our Office.

Metric argues that the agency was correct in its original decision to allow Metric to correct its bid to \$16,406,376,

and that, therefore, its contract was improperly terminated (and the subsequent award to Kiewit was improper). Metric maintains that its estimator simply made errors in adding the appropriate line items to arrive at required subtotals and the total bid, and that its intended bid was \$16,406,376, the sum of the line items. (Metric's explanation for the two different figures entered for its total bid is that Metric had revised its figures, and the lower figure, \$15,698,443, was inadvertently not marked out when \$16,349,872 was entered; however, \$16,349,872 was also an incorrect sum of the line items.) Metric argues that for purposes of establishing its intended bid, the IFB's Arithmetic Discrepancies clause mandates that the smallest components of the bid, the line items, and not the totals derived therefrom, are determinative. Metric agrees with the Corps's original conclusion that there are only three reasonable interpretations of its total bid--\$16,349,872, \$15,698,443, or \$16,406,376--all of which are low, and that therefore its bid, even if ambiguous, was properly accepted for award.

An agency may permit correction of a bid only where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3(a); RJS Constr., B-257457, Oct. 7, 1994, 94-2 CPD ¶ 130. Correction may be allowed, even where the intended bid price cannot be determined exactly, provided 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 in any case after correction. Precon Constr. Co., B-255294; B-255294.2, Apr. 6, 1994, 94-1 CPD ¶ 239. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, only one of which is low, the bid must be rejected. Virginia Beach Air Conditioning Corp., 69 Comp. Gen. 178 (1990), 90-1 CPD ¶ 78. 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. RJS Constr., supra.

We find that the Corps reasonably determined that correction of the evident mistakes in Metric's bid was improper because clear and convincing evidence of the bid actually intended was lacking. As noted by the agency, numerous discrepancies are apparent on the face of Metric's bid. For example, although the solicitation states that item 3B, the NAF portion of item 3, is to be 37 percent of item 3C, the total price for item 3, the amount entered for item 3B (\$144,184) by Metric is \$3,000 more than 37 percent (\$141,184) of the total entered for item 3C (\$381,579). The sum entered by Metric for the subtotal "Total Base Schedule (MCA)," which the solicitation states is to be the total of items 1, 2, 3A

and 4A, is \$13,708,405, whereas the correct addition of those items as stated in Metric's bid is \$13,487,457. The sum entered by Metric for the subtotal "Total Government Options (MCA)," which the solicitation states is to be the total of items 5 and 6, is \$634,569, whereas the correct addition of those items as stated in Metric's bid is \$634,573. The sum entered by Metric for the subtotal "Total Government Options (MCA) plus Total Government Options (MCA)," which the solicitation states is to be the total of items 1, 2, 3A, 4A, 5 and 6, is \$14,342,974, whereas the correct addition of those items as stated in Metric's bid is \$14,122,030. The sum entered by Metric for the subtotal "Total Base Schedule (NAF)," which the solicitation states is to be the total of items 3B, 4B and 7, is \$14,919,403, whereas the correct addition of those items as stated in Metric's bid is \$800,377. The sum entered by Metric for the subtotal "Total Base Schedule (NAF) plus Government Option (NAF)," which the solicitation states is to be the total of items 3B, 4B, 7 and 8, is \$2,284,362, whereas the correct addition of those items as stated in Metric's bid is \$2,287,346. Most significantly, Metric entered two sums (\$16,349,872 and \$15,698,443) for the overall "Total Bidding Schedule," which the solicitation states is to be the total of items 1 through 8, neither of which is the correct addition (\$16,406,376) of those items as stated in Metric's bid.

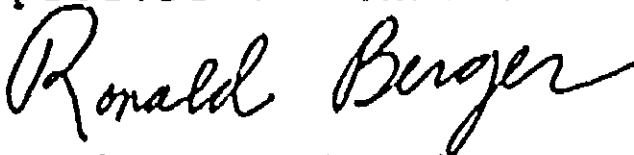
We agree with the Corps that the cumulative effect of the numerous discrepancies is to render uncertain Metric's intended overall bid; it is not obvious from the face of the bid, and Metric did not furnish workpapers or other contemporary extrinsic documentation, whether the error lies in the item prices, the subtotal prices, or the entered total bid price. We recognize that, as noted by the protester, correction may be allowed, even where the intended bid price cannot be determined exactly, where 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 in any case after correction. Precon Constr. Co., supra. Under one reasonable interpretation of Metric's bid, however, its price would no longer be low. Specifically, the sum of the subtotal "Total Base Schedule (MCA) plus Total Government Options (MCA)" and the subtotal "Total Base Schedule (NAF) plus Government Option (NAF)" should equal Metric's price for the entire project. When the sum (\$14,342,974) entered by Metric for the subtotal "Total Base Schedule (MCA) plus Total Government Options (MCA)" is added to the sum (\$2,284,362) entered for the subtotal "Total Base Schedule (NAF) plus Government Option (NAF)," Metric's resulting total price (\$16,627,336) would exceed Kiewit's price (\$16,453,000), that is, would no longer be low.

In any case, even accepting the range of uncertainty claimed by Metric--from \$15,698,443 to \$16,406,376--we do not consider a spread of \$707,933 to be a narrow range of uncertainty permitting correction. See Great Lakes Dredge & Dock Co., B-248007.2, Sept. 3, 1992, 92-2 CPD ¶ 151. Furthermore, under any circumstances, Metric would bear a difficult burden in showing that the Corps unreasonably declined to permit correction of the evident mistakes in Metric's bid, since Metric's requested bid correction price (\$16,406,376) would come within only .28 percent of Kiewit's bid (\$16,453,000). The closer an intended bid comes to the next low bid, the more difficult it is to establish the amount of the intended bid. RJS Constr., supra.

With respect to Metric's argument that, under the IFB's Arithmetic Discrepancies clause, the intended bid should be the correct sum of the line items, we have repeatedly held that this clause cannot, by itself, create a presumption that only one of several plausible prices appearing on a bid is necessarily correct. Here, in light of the numerous and varied errors on the bid schedule, it is not obvious from the face of the bid whether the error lies in the item prices, the subtotal prices, or the entered total bid price. As a result, there is no "apparent error" to which the clause could apply. See Argee Corp., 67 Comp. Gen. 421 (1988), 88-1 CPD ¶ 482; Roy McGinnis & Co., Inc., B-239710, Sept. 24, 1990, 90-2 CPD ¶ 251; DeRalco, Inc., B-205120, May 6, 1982, 82-1 CPD ¶ 430.

Metric argues that Kiewit's bid was nonresponsive because its prices for the NAF-funded items on the bid schedule totaled \$2,765,000, whereas the solicitation limited costs for those items to \$2,357,000. However, inasmuch as we have found reasonable the agency's determination that Metric's bid should be rejected, Metric is not an interested party to protest the award to Kiewit. See Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1995); William G. Tadlock Constr., B-252580, June 29, 1993, 93-1 CPD ¶ 502. In any case, the Corps reports that a waiver of the administrative cost limitation for the NAF portion of the contract was obtained prior to the award to Kiewit. Id.; see generally FAR § 36.205; Triax Pac., Inc., B-236920, Jan. 23 1990, 90-1 CPD ¶ 91.

The protest is denied.

  
for Robert P. Murphy  
General Counsel