



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Worldwide Services, Inc.

File: B-261900

Date: October 27, 1995

Timothy H. Power, Esq., for the protester.

Jan E. Takamine, Esq., and Diane D. Hayden, Esq., Department of the Navy, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency reasonably concluded that the awardee presented clear and convincing evidence of the existence of a mistake in its bid and of the intended price, within a narrow range of uncertainty, and the bid is low with or without correction, agency properly allowed bidder to correct the mistake to the price representing the low end of the range of uncertainty.

DECISION

Worldwide Services, Inc. protests the award of a contract to Landscape Services Corporation (LSC) under invitation for bids (IFB) No. N62755-95-B-2869, for grounds maintenance and tree trimming services. Worldwide contends that LSC was improperly permitted to upwardly adjust its low bid prior to award.

We deny the protest.

The IFB called for bidders to enter prices for two line items--the firm, fixed-price (FFP) work (item 1), and the indefinite quantity (IDQ) work (item 2), and to enter a figure for the "Total Price" (items 1 and 2). Bidders were also required to submit unit prices and extended totals for the 119 IDQ subline items. The solicitation also included a Schedule of Deductions for the FFP work, which called for unit prices and extended totals for the FFP subline items.¹ The page footer of the Schedule of Deductions, which identifies the solicitation number, listed an incorrect solicitation number. Specifically, the page footer listed "14-94-2824" (2824), which is the

¹Bidders were instructed not to submit the Schedule of Deductions with their bids. According to the IFB, the successful contractor should provide its Schedule of Deductions to the agency after award and it would be used to calculate deductions to the contract price in the event of nonperformed or unsatisfactory work.

number of a previously issued solicitation, also for grounds maintenance and tree trimming, rather than the correct 14-95-2869 (2869) solicitation number. The agency subsequently issued amendment No. 2, which included replacement pages for the Schedule of Deductions with the correct solicitation number listed on the page footer.

The government estimate and the three bids received at the April 7, 1995, bid opening were as follows:

BIDDER	RFP	IDQ	TOTAL
LSC	\$899,913.00	\$64,213.00 ²	\$964,126.00
Worldwide	1,314,379.56	67,586.43	1,381,965.99
Govt. Estimate	1,925,307.83	135,798.50	2,061,106.33
Bidder A	2,418,698.50	214,802.50	2,633,501.00

Because of the disparity between LSC's low bid and the next low bid and the government estimate, the contracting officer requested, by letter dated April 11, that LSC verify its price.

In response, by letter of April 11, LSC's president requested permission to correct the FFP portion of its bid. The letter included copies of a 1-page computer printout that was used to prepare LSC's bid and a corrected computer printout that was prepared after bid opening, when LSC became aware of the mistake. LSC also submitted quotes that it received from F.G. Landscaping for solicitation Nos. 2824 and 2869, plus a quote that LSC received from another subcontractor for solicitation No. 2869. In his letter to the agency, LSC's president explained that he made a mistake in the FFP portion of the bid. Specifically, the letter explained that he had sent F.G. Landscaping a copy of the original Schedule of Deductions, which incorrectly included 2824 on the page footer, to obtain quotes on the tree trimming work. LSC's president noted that he had previously received subcontractor quotes from F.G. Landscaping for tree trimming services for solicitation No. 2824, which

²The contracting officer notified LSC that its bid contained numerous calculation errors, that, when corrected, decreased LSC's price for the IDQ work from \$66,162 to \$64,213. Specifically, LSC's bid contained numerous unit price/extended total errors which the contracting officer corrected by following the instructions included in the solicitation. Discrepancies between the unit price and the extended total were resolved by treating the unit price as the intended bid as called for by the IFB, and recomputing the extended total amount accordingly. Worldwide does not argue that the agency improperly corrected the IDQ portion of LSC's bid.

required less than one half of the tree trimming work called for in the present solicitation No. 2869. In preparing the bid for this solicitation, LSC's president explained that he mistakenly input into his computer the quote that F.G. Landscaping had previously submitted for solicitation No. 2824, rather than using F.G. Landscaping's recently submitted quote for solicitation No. 2869. As a result, LSC's bid relied on an incorrect subcontractor tree trimming price of \$207,966, instead of \$532,313. LSC requested that it be allowed to raise the FFP portion of its bid from \$899,913 to \$1,237,788, for a total price of \$1,302,001.

After reviewing LSC's request for correction, the contracting officer noted that LSC had not applied consistent overhead and profit percentage markups to the increased tree trimming cost. The computer printout used to prepare LSC's bid included the allegedly incorrect amount of \$207,966 for tree trimming, and for overhead and profit contained the following:

Subtotal		\$753,926
Overhead	9.97%	75,166
Subtotal		829,092
Profit	4.2%	34,822
Subtotal		863,914

LSC's corrected computer worksheet included the increased \$532,313 figure for tree trimming and the following entries for overhead and profit:

Subtotal	\$1,078,273
Overhead	75,000
Subtotal	1,153,273
Profit	35,000
Subtotal	1,188,273

The agency asked LSC to explain why it had not applied consistent overhead and profit percentage markups to the increased tree trimming cost. LSC responded that it actually had intended to limit overhead to a fixed amount of \$75,000 and profit to a fixed amount of \$35,000, and explained that it had originally inserted percentage figures on its computer worksheets which came as close as possible to the desired figures for profit and overhead. Therefore, according to LSC, when it requested that the agency allow it to increase the FFP portion of its bid, it included on its corrected computer worksheet the actually intended figures for overhead and profit of \$75,000 and \$35,000, respectively.

Based on the information submitted, the Navy allowed LSC to upwardly correct the FFP portion of its bid. Because the agency concluded that LSC's computer worksheet did not provide evidence that LSC intended to limit overhead to \$75,000, and profit to \$35,000, the agency required LSC to use the exact amounts for overhead (\$75,166) and profit (\$34,822) that were actually included in its original bid, and which results in an inconsequentially lower total amount for profit and overhead--\$109,988 versus \$110,000. Accordingly, the agency allowed correction of the bid by \$337,863, from \$964,126 to \$1,301,989. The Navy awarded the contract to LSC on June 26, whereupon Worldwide protested to our Office that LSC had failed to provide clear and convincing evidence of the price that it intended to bid. Performance has been stayed pending resolution of the protest.

Mistakes in a bid generally do not render the bid unacceptable if the errors are correctable under the mistake in bid procedures set out in Federal Acquisition Regulation (FAR) § 14.406. P. K. Painting Co., B-247357, May 5, 1992, 92-1 CPD ¶ 424. Correction is proper if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, and the corrected bid does not displace other bidders. FAR § 14.406-3(a). 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 after correction. See J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43. In those circumstances, correction is limited to increasing the contract price only to the bottom end of the range of uncertainty. Price/CIRI Constr., B-230603, May 25, 1988, 88-1 CPD ¶ 500.

We treat the question of whether the evidence of the mistake and the bid intended meets the clear and convincing standard as a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Gunco, Inc., B-238910, July 17, 1990, 90-2 CPD ¶ 46. Workpapers may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence. Interstate Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86.

Here, the agency reasonably determined that LSC's supporting documentation meets this standard. Specifically, LSC submitted the quotes that it received from F.G. Landscaping for solicitation Nos. 2824 and 2869, along with its workpapers. The workpapers substantiate LSC's contention that the firm inadvertently included the quote that F.G. Landscaping had previously submitted for solicitation No. 2824, rather than using F.G. Landscaping's recently submitted quote for solicitation No. 2869, as it intended to do.

While the workpapers do not conclusively establish the intended overhead and profit, only a narrow range of uncertainty exists as to the actual amount for overhead and profit. Even if LSC's workpapers do not establish that it intended to limit overhead to \$75,166 and profit to \$34,822, it is clear, using the percentage entries contained in LSC's printout, that, at most, overhead would be \$107,504 (based on 9.97 percent of the subtotal), and profit would be \$49,803 (based on 4.2 percent). Thus, depending on how overhead and profit are calculated, LSC's bid would be between \$1,301,989 and \$1,351,280; using the high end of this relatively narrow range of uncertainty, LSC's bid remains approximately 2.2 percent lower than the next low bidder. In our view, this difference constitutes an acceptably

narrow range of uncertainty, and correction to the lower amount was properly allowed. See Marlowe Heating & Air Conditioning Co., B-251467, Mar. 30, 1993, 93-1 CPD ¶ 278.

The protest is denied.

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