DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213035.2 **DATE:** May 15, 1984

MATTER OF: Krygoski Construction Co.

DIGEST:

1. Specifications are not rendered materially defective by an addendum which called for deletion of an item identified as being on one page when, in fact, the item was on another page since (1) item was correctly identified by item number, and (2) all but one of the bidders deleted the item and that bidder failed to comply with any of the changes called for in the addendum. Therefore, since none of the bidders were prejudiced by the error, error is immaterial.

2. Where bid had description portion of item crossed through by a single line, but "quantity" and "unit price" portions were not crossed out and total amount of bid on item was accounted for in total project bid price, bid need not be rejected, since it can reasonably be concluded that bidder intended to cross out the next item which was required to be deleted and bidder crossed out not only description portion of item, but also crossed out "quantity," "unit price" and "total price" portions of item.

3. Where unit price for item was erased or changed, but there is no doubt as to the intended bid price, there is a legally binding offer, acceptance of which would consummate a valid contract which the bidder would be obligated to perform. Therefore, bid need not be rejected.

4. Language in Office of Management and Budget circular A-102, attachment "O," to the effect that grantees shall have their own procurement procedures which reflect applicable state and local laws and regulations does not mean that grantee has to

formulate formal administrative procedures, but means that grantee merely has to follow local procurement procedures.

5. Interest in having bid protest considered is not of such a nature as to entitle bidder to "due process" hearing.

Krygoski Construction Co. (Krygoski) complains against the award of contract No. FM55-C27 by the Menominee-Marinette Twin County Airport Commission to the Bacco Construction Company (Bacco). The contract is for the construction of runways and taxiways at the Twin County Airport in Menominee, Michigan. This project is substantially funded by the Federal Aviation Administration (FAA). We consider such complaints pursuant to our public notice entitled "Review of Complaints Concerning Contract Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975.

We find Krygoski's complaint is without merit.

By way of background, the FAA administers a grant-in-aid program under the provisions of the Airport and Airways Improvement Act of 1982, Pub. L. No. 97-248, title V, September 3, 1982, 96 Stat. 671, and title 14, part 152, of Code of Federal Regulations (CFR).

Under this agreement with the FAA, the grantees are permitted to follow local procurement procedures so long as they meet the minimum requirements of attachment "O" to Office of Management and Budget (OMB) circular A-102. According to the FAA, it does not conduct procurement actions for the sponsors, but does monitor the procurement to assure itself that all required federal stipulations, rules, regulations and laws are followed. The sponsors are responsible for the establishment and implementation of procurement standards and procedures in accordance with federal, state and local laws.

Bid opening was on July 20, 1983, and five bids were received. Bacco was the apparent low bidder, while Krygoski was the second low bidder. By letter of August 5, 1983, Krygoski lodged a protest with the FAA. By memorandum dated August 25, 1983, the Michigan Attorney General's office ruled despite Krygoski's assertions, it was aware of no legal impediments to the award of a contract to Bacco. By letter dated September 9, 1983, received by our Office on September 14, 1983, Krygoski lodged a timely complaint with

our Office. See Brumm Construction Company, 61 Comp. Gen. 6 (1981), 81-2 CPD 280, and Bradley Construction Inc., B-206152, 83-1 CPD 76.

Krygoski contends that (1) addendum No. 1 to the specifications, issued on July 14, 1983, included a clear error which called for the deletion of an item on the wrong page, (2) the apparent low bidder, Bacco, deleted an item of work in its bid amounting to 8.6 percent of the project, (3) a unit price entry by Bacco contains an "overwrite" which does not comply with section 20-08 of the specifications, and (4) the grantees have no formal administrative appeal procedures to challenge bidding procedures or contract awards. Krygoski argues that these irregularities violate the procedures set forth by the FAA in 14 CFR §§ 151, 152, requiring competitive bidding pursuant to public advertising. Krygoski also requested a hearing on the propriety of the bidding procedures utilized in the above solicitation.

In regard to Krygoski's first contention, addendum No. 1 called for the deletion of an item on page 9 of the specification when, in fact, the item to be deleted was on page 10. Krygoski contends that this is an ambiguity which is inconsistent with the federal requirement contained in part 11b(2)(b) of OMB circular A-102, August 15, 1970, which states:

> "(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation."

Krygoski contends that the amendment did not "clearly define the item or services needed."

We do not agree. We concur in the view expressed by Michigan's Office of Attorney General that the error is not a material error. The item to be deleted was correctly identified by item number, which sufficiently informed the bidders which item was to be deleted. All but one of the bidders correctly deleted the item and the bidder who did not delete the item also failed to comply with other changes set forth in addendum No. 1 and was the high bidder. Neither Krygoski nor any of the other bidders was prejudiced by the error. We have held that where none of the bidders is misled as a result of the error, the error is immaterial. See Zinger Construction Company, B-202198, December 28, 1981, 81-2 CPD 497. Also, see United States Contracting Corporation, B-210275, August 22, 1983, 83-2 CPD 222.

Concerning Krygoski's second contention, that Bacco deleted an item of work in its bid amounting to 8.6 percent of the project, a single line was drawn through the description part of item 2090512, but a "unit price" and "total amount" bid were inserted. Krygoski argues that by striking an item of work without authorization from the grantee in violation of section 20-07 of the specifications, Bacco has submitted an irregular bid as defined by section 20-08(b)(4) of the specifications. Section 20-08(b)(4) of the specifications provides:

> "b. Proposals will be considered irregular and may be rejected for any of the following reason:
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> "4. If there are irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to meaning."

We find no reason to question the decision by the grantee not to reject Bacco's bid because of the above irregularity. While Krygoski argues that Bacco deleted item No. 2090512, we note that on the item following item No. 2090512, item No. 4120626, which was required to be deleted by addendum No. 1, Bacco crossed out not only the description but the "quantity," "unit price" and "total price" blanks and inserted no prices. Moreover, more than a single line was used to cross out this item. It would appear that had Bacco intended to delete item No. 2090512, it would have done so in the manner that it deleted item No. 4120626. The grantee is of the view that Bacco, intending to cross out item No. 4120626, as required by addendum No. 1, erroneously started to cross out item No. 2090512, which is directly above item No. 4120626, and, realizing its error, stopped after drawing the one line and then initialed it. Moreover, the grantee does not believe that Bacco deleted this item because, as mentioned above, Bacco did not cross out the "unit price" and "total amount" and the price bid on item No. 2090512 is accounted for in Bacco's total project bid price. We are unable to conclude that the above interpretation of this irregularity is unreasonable or that the decision not to reject Bacco's bid was an abuse of discretion.

Also, in regard to item No. 2090512, Krygoski contends that the unit price for this item contains an "overwrite" which does not comply with section 20-08(b)(1) of the specifications and which provides that a bid may be rejected "if

the form is altered or any part thereof is detached." Where, as in the present case, there is a change or erasure made prior to bid opening and there is no doubt as to the intended bid price, there is a legally binding offer, acceptance of which would consummate a valid contract which the offeror would be obligated to perform at the offered price. Even assuming that the "3" in the $13.81 unit price for item No. 2090512 was altered, if you multiply $13.81 by the required quantity of 19,504 cubic yards, the result is $269,350.24, which was the total price offered for this item. See 49 Comp. Gen. 541 (1970); Werres Corporation, B-211870, August 23, 1983, 83-2 CPD 243.

Also, Krygoski contends that the lack of a formal administrative appeal procedures to challenge bidding procedures or contract awards is a material irregularity in the bidding process. In this regard, we were informally advised that neither the FAA, the grantor, nor the Twin County Airport Commission, the grantee, has formal administrative appeal procedures.

Section 2, OMB circular A-102, attachment "O," provides:

> "b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistant Programs conform to the standards set forth in this Attachment and applicable Federal law."

We do not interpret this provision as mandating that the grantee promulgate formal administrative procedures, but instead we view this provision as merely requiring the grantee to follow local procurement procedures which cannot conflict with the standards set forth in attachment "O" or applicable federal law. There is no evidence of record that the review procedures followed by the grantee in this case did not reflect local procurement procedures or that it was in conflict with attachment "O" or applicable federal law. See Appex Corporation, B-184562, October 6, 1976, 76-2 CPD 311. Nor is there any evidence that the procurement was not conducted in an open and competitive manner since five bids were received. See Copeland Systems, Inc., B-180278, October 17, 1975, 75-2 CPD 237. Moreover, we note that Krygoski and its attorney had a meeting on August 16, 1983, with the grantee to present its complaint and supporting arguments.

Also, in this regard, section 5, OMB circular A-102, attachment "O," provides that the grantor agency may develop an administrative procedure to handle complaints or protests regarding grantee selection actions with reviews being limited to (1) violations of federal law or regulations and (2) violations of grantee's protest procedures or failure to review a compliant or protest.

Due to the discretionary language of section 5, we cannot conclude that grantor agencies are required to establish formal administrative procedures and, as already mentioned, FAA has chosen not to do so. Since FAA has no formal administrative procedures to handle Krygoski's complaint, the matter was appealed to our Office where the issues in question were handled under a federal frame of reference since we are unaware of any state law covering the issues in question. See Griffin Construction Company, B-185790, July 9, 1976, 76-2 CPD 26.

Finally, Krygoski contends that since the state has no formal bid protest procedures, federal minimum standards must apply. Krygoski contends that under these standards, it was entitled to a hearing, citing Goldberg v. Kelly, 397 U.S. 254 (1970), as authority. The Goldberg case held that, as a matter of procedural due process, a welfare recipient is entitled to a pretermination evidentiary hearing.

The Supreme Court has recognized that procedural due process affords the right to a hearing in various situations where the interest of the affected party is tantamount to a property right. Goldberg, supra. However, we are not aware of any authority for the proposition suggested by Krygoski that its interest in having its bid protest considered is of the same nature as that in Goldberg so as to entitle Krygoski to an evidentiary hearing. See Wallace and Wallace Fuel Oil Company, Inc., B-182625, July 18, 1975, 75-2 CPD 48. It is well settled that no firm has a property right in a government contract. See Perkins v. Lukens Steel Co., 310 U.S. 113, 127 (1940); Navajo Food Products, Inc., B-202433, September 9, 1981, 81-2 CPD 206. Of course, firms do have the right to have their bids or offers considered fairly. See Sciences Corporation--Claim for Proposal Preparation Costs, 60 Comp. Gen. 36 (1980), 80-2 CPD 298. We are unable to conclude that Krygoski was treated unfairly.

Krygoski's complaint is denied.

Milton J. Socolar

Acting Comptroller General
of the United States