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Decision

Matter of: IAP-Leopardo Construction, Inc.

File: B-401923

Date: December 2, 2009

Daniel J. Donohue, Esq., Akerman Senterfitt LLP, for the protester.
Ralph C. Thomas III, Esq., Barton Baker Thomas & Tolle, LLP, for the intervenor.
Raymond M. Saunders, Esq., Department of the Army, for the agency.
Cherie J. Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision to allow correction of low bidder's mistake of misplacing a decimal point when entering two subcontractor quotes is denied because the agency reasonably determined that there was clear and convincing evidence of the mistake.

DECISION

IAP-Leopardo Construction, Inc. (IAP) of Columbus, Ohio protests the award of a contract to Trillacorpe Construction, Inc. by the Department of the Army under invitation for bids (IFB) No. W91364-09-B-0002 for construction of phase II of the Combined Support Maintenance Shop (CSMS) at the Defense Supply Center Columbus (DSCC) in Columbus, Ohio. IAP argues that the army improperly allowed Trillacorpe to correct mistakes in its bid after bid opening.

We deny the protest.

BACKGROUND

On April 17, 2009, the Army issued the IFB to obtain construction services at the DSCC in Columbus, Ohio. The Army received five responsive bids at the June 11 bid opening. Trillacorpe submitted the apparent low bid of \$17,529,000; IAP submitted the second low bid of \$19,581,930. Agency Report (AR), Tab 1, at 2. The results of the bid opening are set forth below:

Bidder	Bid Amount
K and T Construction	\$20,800,000
Hi-Mark Building Group	\$20,516,000
Tradesman Group	\$19,925,800
Trillacorpe Construction	\$17,529,000
IAP-Leopardo Construction	\$19,581,930

By letter dated June 12, Trillacorpe advised the Army that it had discovered a mistake in its bid. AR, Tab 6, Request to Correct Bid, at 1. Trillacorpe stated that its intended bid price was \$19,074,444, an increase of \$1,545,444. Id. In its letter, Trillacorpe stated that it could provide clear and convincing evidence of the mistake, and requested permission to correct the bid. Trillacorpe further stated that if it was not permitted to correct its mistake, it would withdraw the bid. Id.

On June 19, the Contracting Officer (CO) denied Trillacorpe's request to correct its mistake, but granted its request to withdraw its bid. AR, Tab 2, CO's Statement at 1. The CO stated that she based her decision on the assumption that the request was made pursuant to Federal Acquisition Regulation (FAR) § 14.407-2, which allows for corrections of mistakes in bids that are apparent on the face of the bid. AR, Tab 2, CO's Statement at 1. On July 23, the agency notified IAP that it was the apparent low bidder, and requested that the company extend its bid acceptance period by 30 days to allow the agency to process the award. Id.

Via letter dated July 31, Trillacorpe challenged the CO's decision not to allow it to correct its bid. In its letter, Trillacorpe argued that the CO had incorrectly considered its request to raise an apparent clerical mistake under FAR § 14.407-2, rather than considering it under the broader authority at FAR § 14.407-3. AR, Tab 12, Letter Contesting CO's Decision, at 1-2. Trillacorpe also noted that the CO had not allowed the firm to submit the evidence it had referenced in its June 12 letter. Id.

In response, the CO allowed Trillacorpe 5 days to provide clear and convincing evidence of the existence of a mistake in the bid, and informed Trillacorpe that the National Guard Bureau's Principal Assistant Responsible for Contracting (PARC) would be the approval authority for correction of a bid. AR, Tab 2, CO statement, at 2. Two days later, Trillacorpe provided the PARC with a letter explaining the alleged mistake along with what it believed was clear and convincing evidence of the mistake. AR, Tab 15, Letter from Trillacorpe to PARC, at 1-2. Specifically, Trillacorpe contended that two clerical mistakes occurred in the preparation of its bid. Id. First, Trillacorpe stated that it had inadvertently misplaced the decimal point in the entry of a subcontractor's pricing for the [deleted] portion of the project. Id. Thus, Trillacorpe stated that the \$1,070,000 [deleted] price was mistakenly entered as \$1,070. Id. Trillacorpe stated that the second error was also the result of a misplaced decimal—i.e., its quote for [deleted], which was \$529,460, was mistakenly entered as \$52,946. Id. In support of its claimed mistakes Trillacorpe submitted its

bid worksheets showing the mistaken entries, along with documents showing the original subcontractor quotes. Id.

After reviewing the documents, the PARC requested that Trillacorpe submit a sworn declaration to authenticate the information it had submitted. AR, Tab 16, Letter from PARC to Trillacorpe Requesting Sworn Statement, at 1. Thereafter, Trillacorpe's estimator, who was involved in the preparation of the bid, submitted a sworn statement explaining the two mistakes and affirming the authenticity of the documents. AR, Tab 17, Sworn Statement of Trillacorpe Estimator. After reviewing the information, the PARC determined that there was clear and convincing evidence to establish both the existence of a mistake and the bid actually intended. AR, Tab 18, Letter from PARC to Trillacorpe Allowing Correction of the Bid, at 1. The agency allowed Trillacorpe to correct its bid, and on September 9, the Army awarded the contract to Trillacorpe in the amount of \$19,074,444. This protest followed.

DISCUSSION

IAP argues, among other things, that the agency's decision to allow Trillacorpe to correct its bid was unreasonable because Trillacorpe failed to produce clear and convincing evidence establishing the bid that was actually intended. Comments at 4-7. Specifically, IAP contends that Trillacorpe failed to show how the increase in the two line items set forth above would have increased its bid to exactly \$19,074,444, because according to Trillacorpe's bid calculation worksheet, it intended to add [deleted]% to its costs for general conditions, [deleted]% to its subcontractor work for subcontractor bonds, and [deleted]% to its bid for Trillacorpe's fee. Comments at 7; see AR, Tab 17, Sworn Statement with Bid Worksheets, at 11. IAP argues that these charges would have increased Trillacorpe's intended bid to \$19,227,149. Id. IAP contends that Trillacorpe's decision not to add these adjustments to its corrected bid price is a negotiation after bid opening, and, in any case, casts doubt upon the amount of Trillacorpe's intended bid.¹

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, so long as the correction would not result in displacing one or more lower bids. FAR § 14.407-3(A); Reliable Mechanical, Inc., B-282874.2, Sept. 13, 1999, 99-2 CPD ¶ 52 at 2; Holmes Mechanical, Inc., B-281417, Jan. 13, 1999, 99-1 CPD ¶ 6 at 2. A request to correct a bid must be supported by statements and shall include all pertinent evidence, including original worksheets and other data used to prepare the bid,

¹ IAP also argues that it was improper for the agency to award to Trillacorpe because it had withdrawn its bid on June 12. Comments at 2-4. We think it is clear from the record that Trillacorpe's withdrawal of its bid was conditional on the firm not being permitted to correct its bid. Because the agency allowed for correction of the bid, Trillacorpe's bid was not withdrawn. This protest ground is therefore dismissed.

subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended. FAR § 14.407-3(g)(2). In judging the sufficiency of the evidence, we consider factors such as the closeness of the corrected bid and the next low bid as well as the range of uncertainty in the intended bid. Western Alaska Contractors, B-220067, Jan. 22, 1986, 86-1 CPD ¶ 66 at 4. In general, the closer an asserted intended bid is to the next low bid, the more difficult it is to establish that it was the bid actually intended. Id. Correction of a bid may be permitted to reflect the omission of direct costs without any increase for profit where the bidder requests correction in such form and the bid would remain low whether or not the low bid is amended to reflect profit. Matzkin & Day, B-167068, Feb. 10, 1970, 49 Comp. Gen. 480 at 483. 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. J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ 353 at 3.

We conclude from the record that the agency's decision to allow correction of Trillacorpe's bid was reasonable. In this regard, Trillacorpe submitted its subcontractor quotes showing the correct prices, which are then reflected on the bid worksheets, but with misplaced decimal points. Thus the number \$1,070,000 was incorrectly entered as \$1,070, and the number \$529,460 was incorrectly entered as \$52,946. The difference between these two numbers is \$1,545,444, the exact amount by which Trillacorpe requested to adjust its bid.

While we recognize that Trillacorpe has elected not to add to the corrected amount the percentage charges for general conditions, subcontractor bonds, and fee—that are shown on its bid worksheet—even if these charges had been added to the bid, it would have increased only to \$19,227,149, an amount still over \$300,000 lower than the next lowest bid. See Comments at 7. We have held that, if there is a range of uncertainty regarding the intended bid, correction should place the contractor at the bottom end of that range. Western Alaska Contractors, supra, at 6. We also note that correction of this bid is not prejudicial to the other bidders. See Matzkin & Day, supra. Further, the agency requested and received a sworn statement from an individual who participated in the preparation of the bid, explaining the mistakes and attesting to the authenticity of the documents submitted.

Based on the record presented here, we find nothing unreasonable in the agency's decision to allow Trillacorpe to correct its bid, or the award to Trillacorpe.

The protest is denied.

Lynn H. Gibson
Acting General Counsel