



Decision

Matter of: Wright & Morrissey

File: B-417105

Date: February 15, 2019

Marc Heath, Esq., Downs Rachlin Martin PLLC, for the protester.
Scott N. Flesch, Esq., Brian Habib, Esq., Department of the Army, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Correction of a bid that results in the displacement of a lower bid was reasonable where the existence of the mistake and the intended bid is ascertainable from the hand written information on the bid itself.

DECISION

Wright & Morrissey, of South Burlington, Vermont, protests the award of a contract to Stewart Construction Inc., of Essex Junction, Vermont, under invitation for bids (IFB) No. W912LN-18-B-5001, issued by the Department of the Army, Vermont Air National Guard for construction services. The protester alleges that the agency improperly allowed Stewart to correct a mistake in its bid, displacing the protester as the low bidder.

We deny the protest.

BACKGROUND

The IFB, issued on April 20, 2018, was posted on the Federal Business Opportunities (FedBizOpps) website. The IFB sought bids for the renovation of building 385, the aircraft shelter and fuel cell located at the Vermont Air National Guard Base in South Burlington, Vermont. IFB at 2. The required renovations, as specified in the IFB plans and drawings, were described in eight contract line item numbers (CLINs): CLIN 0001, the base bid for building 385; CLIN 0002, for contract manpower reporting (CMR); CLIN 0003, for communications and cabling equipment (CCE); CLIN 0004, option 1, aircraft cooling unit; CLIN 0005, option 2, aircraft 270 VDC converter; CLIN 0006, option 3, compressed air system; CLIN 0007, option 4, lower roof replacement; and CLIN 0008,

option 5, upper roof replacement. Id. at 3-6. Bidders were to provide unit prices for each CLIN.

The IFB was amended five times. Of relevance here, is the agency's response to a potential bidder's question concerning installation of fire pumps:

Question (Q): Drawing FX001-Rev C note 7 under general notes calls for (2) fire pumps to be installed, but there are no details or specs for the pumps. Spec section 211313 1.2.1.1 notes that the calculations shall be based on fire pumps in Building 360. Please clarify. Are the pumps existing in B360?

Answer (A): Fire Suppression General Note 7 on FX001 is in error, and should be deleted. Currently there is one pump in B385, which feeds B385 and B360. This pump is not adequate for the new pressures. Two new fire pumps will be provided in B360 to serve B360 and B385 through the existing underground.

IFB amend. 5, Q&A No. 24 at 6 (June 19, 2018).

The agency received eight bids, which it opened as scheduled on June 21, 2018. When Stewart's bid was opened, the contracting officer observed that the bid included handwritten notations directly below Stewart's bid price for CLINs 0001, 0002, and 0003, respectively. Specifically, below the bid amount for CLIN 0001, the notation read "Note: Fire Pumps Excluded From B360." Agency Report (AR) exh. 9, Stewart's Bid at 3 (emphasis in original). Under its bid amounts for CLINs 0002 and 0003, the notation read "Note: Included In Our Base Bid; We Assume This Is A Breakout." Id. at 3-4; Contracting Officer's Statement at 1 (Nov. 19, 2018).

Upon review of Stewart's bid, the contracting officer immediately noticed the handwritten notations and their potential for a bid mistake. Because he expected that he would need further legal guidance regarding the matter, he did not disclose the presence of these notations during bid opening and did not take account of the handwritten notes when calculating Stewart's bid.¹ Contracting Officer's Statement at 1 (Nov. 19, 2018). In calculating Stewart's total bid price, the contracting officer added the prices listed for each of the eight CLINs, and used the same calculation methodology to determine the total bid price for the other bidders. Wright & Morrissey submitted the apparent low bid of \$5,172,000.00, and Stewart submitted the second low bid of \$5,220,950.00. AR exh. 13, Abstract of Bids (June 21, 2018).

¹ The contracting officer reports that all eight bidders were present at bid opening and after bids were opened and calculated, he invited bidders to inspect the bid documents and no one did. Contracting Officer's Statement at 1 (Nov. 19, 2018).

The following table shows the unit prices submitted by Wright & Morrissey and Stewart, along with the independent government estimate (IGE):

	Wright & Morrissey	Stewart	IGE
CLIN 0001 Base Bid	\$4,570,000.00	\$4,600,600.00	\$5,314,000.00
CLIN 0002 CMP	3,000.00	4,500.00	6,000.00
CLIN 0003 CCE	50,300.00	50,200.00	64,185.00
CLIN 0004 Option 1	119,000.00	187,300.00	222,984.00
CLIN 0005 Option 2	33,700.00	62,200.00	51,106.00
CLIN 0006 Option 3	57,000.00	52,000.00	145,064.00
CLIN 0007 Option 4	157,000.00	114,100.00	120,653.00
CLIN 0008 Option 5	182,000.00	150,050.00	770,724.00
Total Bid Price	\$5,172,000.00	\$5,220,950.00	\$6,694,716.00

Id.²

On June 22, the Army posted the abstract of bids on FedBizOpps. That same day, Stewart contacted the contracting officer to obtain clarification of its total bid price. Id. exh 24, Email from Stewart at 2 (June 22, 2018). Later that day, the contracting officer requested that Stewart verify its bid. Id. exh. 25, Agency Email to Stewart (June 22, 2018). Thereafter, the contracting officer gave Stewart an opportunity to either withdraw or modify its bid. Id. exh. 29, Agency Letter to Stewart (July 3, 2018).

By letter dated July 9, Stewart requested the agency's permission to correct a mistake in its bid by reducing its bid price for CLIN 0001 by \$54,700, the total price for CLINs 0002 and 0003. In support of its request, Stewart's president explained that the firm had mistakenly included the bid price for CLIN 0002 and CLIN 0003 in its bid price for CLIN 0001, the base bid. According to the president, because the IFB identified a list of optional requirements, CLIN 0004 through CLIN 0008, Stewart assumed that its bid amount for CLIN 0001 should include the bid amount for CLIN 0002 and for CLIN 0003, which were not listed as optional requirements. Consistent with this assumption, Stewart explained that it included the handwritten notation under CLINs 0002 and 0003 to indicate that the bid price for both CLINs were "[i]ncluded in our Base Bid; we assume this is a breakout." AR exh. 30, Bid Correction Request Letter at 1 (July 9, 2018). Once the bid price for CLINs 0002 and 0003, that is, \$54,700, were subtracted from the bid price for CLIN 0001, Stewart's total bid price for all CLINs is \$5,166,250.00 and not \$5,220,950.00. Id. at 3.

The contracting officer analyzed the request for bid correction and memorialized his analysis in a memorandum sent to the Principal Assistant Responsible for Contracting,

² The total bid price for the other bidders ranged in price from \$5,379,987.00 to \$6,750,000.00. AR exh. 13, Abstract of Bids (June 21, 2018).

the cognizant agency official. The Principal Assistant concurred with the contracting officer's analysis of the request and authorized correction of Stewart's bid even though it displaced Wright & Morrissey as the apparent low bidder. AR exh. 27, Determination and Findings (Aug. 16, 2018). The agency subsequently made award to Stewart at its corrected bid price of \$5,166,250.00.

Following denial of its agency-level protest, Wright & Morrissey filed this protest with our Office. Wright & Morrissey essentially argues that it was improper for the agency to allow Stewart to correct its bid, and thereby replace the protester, because there was no clear and convincing evidence to establish both the existence of the mistake and Stewart's intended bid from the bid itself.

DISCUSSION

In order to protect the integrity of the procurement process, a bidder's request for correction of its bid after bid opening but prior to award may be granted where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.407-3(a); see also, Concorde Battery Corp., B-235119, June 30, 1989, 89-2 CPD ¶ 17 at 2; Marine Ways Corp., B-211788, Aug. 29, 1983, 83-2 CPD ¶ 271 aff'd, Marine Ways Corp.--Request for Recon., B-211788.2, Nov. 16, 1983, 83-2 CPD ¶ 574. If correction of the bid would result in the displacement of one or more lower bids, the determination to allow correction shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. Id.

Wright & Morrissey argues that Stewart's claimed mistake and intended bid were not evident from the bid itself. According to the protester, the agency should not have considered the handwritten notations on Stewart's bid schedule because those notations were not responsive to the IFB and only "obfuscate Stewart's actual bid." Protest at 4. The protest is without merit.

In allowing Stewart to correct its bid, the agency reasonably concluded that Stewart's bid itself clearly and convincingly established both the existence of the mistake and the bid actually intended. In reaching this conclusion, the contracting officer considered the handwritten notation under CLIN 0001, "Note: Fire pumps excluded from B360," concluding that it was a redundant notation which did not affect the responsiveness of Stewart's bid because the IFB, as amended, did not require the purchase or installation of any fire pumps. AR exh. 27, Determination and Findings at 3. As to the handwritten notation under each of CLINs 0002 and 0003, "Note: Included in our Base Bid; We assume this is a breakout" see id. at 1, the contracting officer reasonably understood this notation to be an indication that Stewart had included the prices for CLINs 0002 and 0003 in the price of CLIN 0001 and had assumed that CLINs 0002 and 0003 were breakout costs of its base bid. In doing so, the contracting officer concluded that Stewart had double-counted the costs of CLINs 0002 and 0003 by including those costs in CLIN 0001, its base bid, and determined that Stewart's intended bid was evident from the face of the bid. Id. at 2-3. Accounting for this error, the agency allowed Stewart to

correct its bid for CLIN 0001 as \$4,545,900 (\$4,600,600, base bid minus \$54,700, the total price of CLINs 0002 and 0003), resulting in a total price, as noted above, of \$5,166,250.00. While the protester suggests that the bid at issue was open to “multiple interpretations” it offers no alternative to the one adopted by the agency, let alone a reasonable alternative.³ Protester’s Comments at 4. On this record, we have no basis to question the Army’s decision to allow correction of Stewart’s bid and thereby displace Wright & Morrissey’s apparent low bid.

The protest is denied.

Thomas H. Armstrong
General Counsel

³ In support of its protest, the protester relies on our decision Nabholz Building and Management Corp., B-274930, Nov. 21, 1996, 96-2 CPD ¶ 196, where we denied a protest of an agency’s decision not to allow a bidder to correct an alleged mistake. In that case, the bidder claimed correction was warranted because it had mistakenly included bond costs twice in its bid--in its base bid as well as in a line item for bond costs. Nabholz is distinguishable from the case at hand for a variety of reasons, the most important of which is the fact that the bid document in Nabholz provided no indication, such as the handwritten notes on Stewart’s bid in this case, that the bidder had in fact included the bond costs in its base bid.