

DECISION



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

60530

FILE: B-184321

DATE: February 18, 1976

MATTER OF: Worldwide Services, Inc.

98595

DIGEST:

1. Protest after opening of bids against agency interpretation that evaluation of bid scheme for annual contract containing both annual and monthly requirements is limited to monthly basis for two IFB items soliciting monthly prices is timely.
2. Although IFB for annual contract solicited some prices on monthly basis, IFB should have been interpreted as contemplating evaluation for award of contract on annual basis, since it is unreasonable to evaluate bids on mixed basis (sum of annual plus monthly prices) when it would result in award to other than actual low bidder for year.
3. That bidder actually intended prices bid as monthly prices to be annual prices is confirmed by fact that extending prices for 12 months results in totals that would have been 10 and 7 times greater than other bidder's annual prices. Moreover, bidder's worksheets show that prices were intended to be annual prices and establish unit prices for items in question.
4. Where bidder should have been evaluated as low bidder for contract, late modification which increased prompt payment discount was for consideration as part of bid. Therefore, if low bidder is responsible, recommendation is made that contract awarded to another bidder be terminated for convenience of Government and award for balance of contract be made to low bidder.

Invitation for bids (IFB) F01602-75-09525, issued on May 2, 1975, by the Base Procurement Division, Craig Air Force Base, solicited bids for performing various services, including refuse collection, during the period of July 1, 1975, to June 30, 1976. The IFB, as amended, provided that bids would be opened at 2 p.m. on June 11, 1975.

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The day before bid opening, June 10, 1975, the contracting officer received a telephone call from Western Union, Birmingham, Alabama, which indicated that Worldwide Services, Inc. (Worldwide), wished to change the 20-calendar-day prompt discount in its bid from 1/10th of 1 percent to 1 percent. At 8:30 a.m. on June 11, 1975, the date set for bid opening, Worldwide was notified that the contracting officer had received the Western Union telephone call. However, it was also advised that the change Worldwide desired to make in its bid could not be allowed if not physically received by the time set for bid opening. Thereafter, at 11:18 a.m., a telegram was received from Worldwide which stated:

"IN REGARDS TO SOLICITATION # F01602-75-09525,
BASE SERVICES, CRAIG AIR FORCE BASE, ALABAMA, WE
WISH TO CHANGE OUR PROMPT PAYMENT DISCOUNT FROM
1/10TH OF ONE PERCENT 20 CALENDAR DAYS
JAMES E RICE PRESIDENT WORLDWIDE SERVICES INC"

The telegram did not indicate what new prompt payment discount Worldwide intended to bid. The contracting officer indicates that several times prior to the 2 p.m. bid opening, telephone calls were placed to Worldwide and to Western Union in an attempt to obtain a written clarification of the 11:18 telegram prior to bid opening. These attempts were unsuccessful.

At the appointed hour for bid opening, 2 p.m., bids were opened. The following bids were received:

Total Cost	<u>Dyneteria, Inc.</u>	<u>Worldwide</u>
with item 4(a)	\$960,098.65	\$940,610.69
with alternate item 4(b)	956,018.65	939,201.89

Evaluating the bids at the Dyneteria 1-1/2 percent and Worldwide 1/10 percent discounts produces results as follows:

Total Cost	<u>Dyneteria, Inc.</u>	<u>Worldwide</u>
with item 4(a)	\$945,697.17	\$939,670.08
with alternate item 4(b)	941,678.37	938,262.69

Item 4(a) covers backdoor refuse collection services while alternate item 4(b) covers curbside refuse collection.

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At 2:22 p.m., 22 minutes after the time set for bid opening, a telegram was received from Worldwide which read in pertinent part as follows:

"* * * WE WISH TO CHANGE OUR PROMPT PAYMENT DISCOUNT FROM 1/10TH OF ONE PERCENT 20 CALENDAR DAYS TO READ ONE PERCENT 20 CALENDAR DAYS."

In this regard, clause C-38 made effective by amendment No. M02, dated June 2, 1975, states:

"TELEGRAPHIC MODIFICATIONS MUST BE PHYSICALLY RECEIVED IN THIS OFFICE PRIOR TO THE TIME AND DATE SET FOR BID OPENING (SEE PARAGRAPH 5 OF SF 33A)."

However, the late bid provision, clause C-33 of the IFB, states:

"* * * A LATE MODIFICATION OF AN OTHERWISE SUCCESSFUL BID WHICH MAKES ITS TERMS MORE FAVORABLE TO THE GOVERNMENT WILL BE CONSIDERED AT ANY TIME IT IS RECEIVED AND MAY BE ACCEPTED."

Since the Worldwide telegram arrived after the bid opening and the late receipt was not due to Government mishandling, the Air Force concluded that the telegram was an unacceptable late modification.

In that regard, the Air Force is of the view that Worldwide was not the otherwise successful bidder. It takes the position that even if Worldwide's prices on items 4(a) and 4(b) were treated as annual prices and were divided to arrive at monthly prices, Worldwide would not be the low bidder upon the application of the evaluation scheme to the monthly prices.

The Air Force states that a review of the bids revealed a wide disparity between the bidders' prices for items 4(a) and 4(b). With respect to those items, the IFB read as follows:

4(a). Exhibit 4 - Refuse Collection and Disposal (reference Part iv, a, Exhibit 4)

	Estimated	Pickup Sta Per Month	UNIT PRICE	AMOUNT
(1) Garbage pick-up in MOQ Housing that is presently curbside pick-up.	32		\$ _____	\$ _____
(2) Backdoor/Sidedoor Garbage Pickup in Pine Glen and Craig View Military Housing	272	"	\$ _____	\$ _____
(3) Other Pickup Stations	133	"	\$ _____	\$ _____
(4) Miscellaneous Pickups	<u>150</u>	Per Pickup	\$ _____	\$ _____

TOTAL: 587

4(b). ALTERNATE BID ITEMS Estimated

(1) Curbside Garbage Pickup in MOQ, Pine Glen and Craig View Military Family Housing (Includes the 32 MOQ's in Bid Item 4(a)(1)). (Reference Section D, Paragraph D-2 for evaluation of Alternate Bid Items).	304	Pickup Sta Per Month	\$ _____	\$ _____
(2) Other Pickup Stations	133	"	\$ _____	\$ _____
(3) Miscellaneous Pickup	<u>150</u>	Per Pickup Up	\$ _____	\$ _____

TOTAL: 587"

On items 4(a) and 4(b), Worldwide bid unit prices of \$127.76 and \$125.36, respectively, and extended prices that were the product of the estimated quantities multiplied by the respective unit prices. In addition, Worldwide provided in the bid a total of \$74,995.12 for the extended prices in item 4(a) and \$73,586.32 for the extended prices in item 4(b). The Air Force contacted Worldwide with regard to its intention as to the unit prices on items 4(a) and 4(b). The president of Worldwide stated that the figures in the unit price column for these items represented the yearly cost for one pickup station. When questioned as to the actual unit price for one pickup station per month, the Worldwide president quoted \$10.6466 for item 4(a) and \$10.648 for 4(b) or approximately 1/12th of its stated unit price for each of the subitems in 4(a) and 4(b).

The Air Force states that, although all other items in the IFB would be priced on an annual basis, items 4(a) and 4(b) contemplated an extended price on a monthly basis. Furthermore, it states that, while the requirement for bids on monthly requirements in lieu of annual requirements was inadvertent, the bid schedule was nonetheless clear and unambiguous as to the requirement for monthly prices. Notwithstanding the IFB requirement for monthly prices--

"Worldwide alleged that it was obvious that the Government desired annual prices and therefore annualized its unit price by multiplying the intended monthly price by 12. Dyneteria also believed that annual prices were desired, however, instead of annualizing the unit price, Dyneteria annualized the 'amount' or 'total' column."

After a number of interim opinions as to the propriety of allowing Worldwide the opportunity to correct its mistake, the Acting Staff Judge Advocate, Headquarters Air Force Logistics Command at Wright-Patterson Air Force Base, issued an administrative determination on June 26, 1975, which stated:

"In accordance with ASPR § 2-406.3(a)3, I hereby make the following administrative determination:

"That clear and convincing evidence has been presented that Worldwide Services, Inc. of Smithville, Tennessee made a bona fide mistake in its bid to IFB F01602-75-09525.

"That clear and convincing evidence has not been presented as to the bid actually intended.

"That Worldwide Services, Inc. is not permitted to modify the bid, but is permitted to withdraw the bid from consideration for award."

On June 26, Worldwide was notified by telephone of this decision and, in turn, of the contracting officer's decision to award to Dyneteria. As indicated by the Air Force, "Immediately following the award to Dyneteria, Worldwide submitted a protest to the General Accounting Office * * *." That protest was filed in our Office on June 27. The substance of Worldwide's protest was (1) that the Air Force had improperly rejected its late modification and (2) that Worldwide should have been allowed to correct "its mistake concerning the unit price quotation" and should have been awarded the contract in question.

The Air Force responded:

"In presenting its protest, Worldwide has assumed that if its bid were corrected it would become the low bidder. Such assumption would be correct only if the late bid modification were accepted and considered in the evaluation of bids; at the original discount offered by Worldwide, Dyneteria's bid was lower by \$7150.05 (See Atch 1). Thus, the overriding issue of the protest is the acceptability of Worldwide's late bid modification. * * *"

"Atch 1" sets forth the following analysis of the bids with the total prices on items 4(a) and 4(b) set out on a monthly basis figured at 1/12 of the amount of Dyneteria's extended bid price and of Worldwide's unit and extended bid prices:

"*ANALYSIS OF BIDS

ITEM NO.	QUANTITY	DYNETERIA		WORLDWIDE	
		UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1(a)	70,000	\$ 3.457	\$241,990.00	\$ 4.61	\$322,700.00
(b)a	2	408.00	816.00	1332.30	2,664.60
b	1	544.00	544.00	1568.92	1,568.92
2(a)	12	4529.00	54,348.00	2813.15	33,757.80
(b)	12	4529.00	54,348.00	3052.76	36,633.12
(c)	100	3.07	307.00	4.61	461.00
3	13,720	7.54	103,448.80	6.45	88,494.00
4(a)(1)	32	19.00	608.00	*10.65	340.80
(2)	272	20.25	5,508.00	*10.65	2,896.80
(3)	133	5.00	665.00	*10.65	1,416.45
(4)	150	5.00	750.00	*10.65	1,597.50
(b)(1)	304	19.00	5,776.00	*10.45	3,176.80
(2)	133	5.00	665.00	*10.45	1,389.85
(3)	150	5.00	750.00	*10.45	1,567.50

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ITEM NO.	QUANTITY	DYNETERIA		WORLDWIDE	
		UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
5(a)	\$ 7,152	\$ 6.90	\$ 49,348.80	\$ 5.92	\$ 42,339.84
(b)	2	544.00	1,088.00	1586.92	3,173.84
6	3,234,048	.05375	173,830.08	.0432	139,710.87
7	7,146	6.8532	48,972.97	4.73	33,800.58
8	33,900	4.15	140,685.00	4.73	160,347.00
TOTAL - (ITEM 4a)			\$877,257.65		\$871,903.12
LESS DISCOUNT		1 1/2%	864,098.78	1/10%	871,031.21
TOTAL - (ALT. ITEM 4b)			\$876,917.65		\$871,785.72
LESS DISCOUNT		1 1/2%	863,763.88	1/10%	870,913.93

*Bids analyzed on the basis of unit price; analysis assumes (arguendo) that Worldwide's bid should have been corrected."

By setting out bid items 4(a) and 4(b) on a monthly basis, Dyneteria becomes the low bidder, since its evaluated bid (including discount) is reduced from \$945,697.17 (with item 4(a)) and \$941,678.37 (with item 4(b)) to \$864,098.78 and \$863,763.88, respectively, while Worldwide's prices are reduced from \$939,670.08 (with item 4(a)) and \$938,262.69 (with item 4(b)) to \$871,031.21 and \$870,913.93, respectively. Thus, it appears that the analysis of items 4(a) and 4(b) on a monthly basis was the reason that Worldwide's bid which initially appeared low (and therefore could have been lowered further by a "late" modification) was determined not to be low.

The Air Force is of the view that Worldwide's protest on items 4(a) and 4(b) is untimely under section 20.2(b)(1) of the Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), which states:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

However, Worldwide is not contesting that it was improper to solicit items 4(a) and 4(b) prices on a monthly basis. Worldwide's complaint is against the Air Force interpretation that the evaluation of bid scheme for the annual contract is limited to a monthly basis for items 4(a) and 4(b). Worldwide's protest against the Air Force interpretation after the opening of bids is timely.

Moreover, we do not believe that the Air Force interpretation is reasonable. First, the IFB states:

"Contractor shall furnish all management, supervision, labor, supplies and equipment necessary to perform services prescribed in exhibits [items] 1 through 9 and general conditions during the period 1 July 1975 through 30 June 1976 * * *"
 (Emphasis supplied.)

Second, the "Evaluation Factors for Award" paragraph D-1 stated that the award would be made in the aggregate to the bidder who was low, price and other factors considered. Third, the IFB called for total bid prices for (1) items 1 through 4(a) and 5 through 8; and (2) items 1 through 3 and 4(b) through 8.

The summing of the annual and the monthly prices, as the Air Force states the IFB required, would not demonstrate which bid is low for the entire period contemplated. The summation of annual and monthly prices can lead to situations where the calculated low bid is not in fact low. Assume, for example, a situation where the annual and monthly prices are added as follows:

	<u>Bidder A</u>			<u>Bidder B</u>	
bid item 1	\$1,000	annual	\$	999	annual
2	1,000	annual		999	annual
3	1,000	annual		999	annual
4	1,000	annual		999	annual
5	<u>10</u>	monthly		<u>13</u>	monthly
	\$4,010			\$4,009	

On this basis, bidder "B" would be the low bidder. However, the respective estimated total costs for the bidders during a 12-month period would be:

	A		B
1	\$1,000		\$ 999
2	1,000		999
3	1,000		999
4	1,000		999
5	<u>120</u>	(\$10 x 12)	<u>156</u>
	\$4,120		\$4,152

Thus, the "low" bidder in the first example would exceed the other bidder if the bids were evaluated on a total annual basis. In the circumstances, it is not reasonable to evaluate bids on a mixed basis when it would result in an award to other than the actual low bidder for the year. Therefore, even though items 4(a) and 4(b) in the IFB solicited prices on a monthly basis, the Air Force should have interpreted the total IFB as contemplating the evaluation for the award of the contract on an annual basis.

As indicated above, Worldwide's prices on the annual basis are lower than Dyneteria's. However, by Worldwide's own admission, its bid contained a mistake in that it had annualized both the unit and extended prices for items 4(a) and 4(b) even though the IFB called for monthly prices.

In Atlantic Maintenance Company, 54 Comp. Gen. 686 (1975), 75-1 CPD 108, we were faced with a similar situation in which the bidder in line for award did not provide the requisite type of unit price (i.e., a unit price per square foot per month) but rather provided a total monthly "unit" price. The IFB had instructed each bidder for the janitorial services there in question to indicate (1) its unit price per square foot per month for the estimated quantity of approximately 1 million square feet; and (2) its total price determined by multiplying the number of square feet per month by the number of months (12) multiplied by the rate per square foot. The following relevant bids were received:

	<u>Unit</u>	<u>Unit price</u>	<u>Total amount</u>
Suburban Industrial Maintenance Inc.	Job	\$41,400	\$496,800
Atlantic Maintenance Company	Job	.041	552,516

The situation is analogous to the immediate case in that in both instances the unit prices of the apparent low bidders deviated from that contemplated by the IFB (i.e., Suburban provided a monthly price rather than a monthly price per square foot while Worldwide provided an annual unit price rather than a unit price per month).

As we stated in Atlantic Maintenance, supra, wherein we denied the protest against the award to Suburban:

"In our opinion, the contracting officer did act reasonably in determining that Suburban * * * made a clerical error which is correctable. Pursuant to ASPR § 2-406.2 (1974 ed.), a 'clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended.' The mistake which is apparent is that Suburban failed to insert its unit price per square foot per month, but rather inserted its unit price per square foot per month multiplied by 1,123,000 square feet, the monthly estimate. This is ascertainable from the face of the bid because the bidding formula in question was unit price per square foot per month, times monthly estimate, times 12 months. An examination of the monthly and aggregate figures in Suburban's bid indicates that its monthly bid price is equal to its aggregate price over a 12 month period, the contract term. It is a simple matter to recompute Suburban's unit price per square foot per month, which is \$.03686, and correction is consistent with Suburban's monthly price and its aggregate price, as no other unit figure could be computed from the IFB's bidding formula. See Matter of Berc Building Maintenance Company, B-181489, September 6, 1974; B-164453, July 16, 1968. We do not believe it logical that Suburban bid \$41,400 as other than its total monthly price, as the bid formula was clearly explained on the same page and as Suburban thereafter followed that formula to arrive at its total bid prices. Therefore, we cannot agree with this aspect of Atlantic's argument. 46 Comp. Gen. 77 (1966). Also, we cannot agree that Suburban intended to bid a unit price of \$.0414, as the extension of that unit price is considerably more than the \$498,000 aggregate bid of Suburban (which figure is consistent with the bidding formula)."

In the instant case, although a formula is not stated for arriving at an annual price for each subitem in items 4(a) and 4(b), that would have to be accomplished by multiplying the unit price per month per station by the estimated number of stations (extended price) multiplied by 12 months. An examination of the aggregate figures in World-wide's bid indicates that it multiplied its unit prices by the estimated number of stations per month to arrive at its total price for each subitem, i.e.:

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<u>Item 4(a)</u>	<u>Estimate</u>		<u>Pickup station per month</u>	<u>Amount</u>
(1)	32	x	\$127.76	= \$ 4,088.32
(2)	272	x	127.76	= 34,750.72
(3)	133	x	127.76	= 16,992.08
(4)	150	x	127.76	= <u>19,164.00</u>
				\$74,995.12

Item 4(b)

(1)	304	x	125.36	= \$38,109.44
(2)	133	x	125.36	= 16,672.88
(3)	150	x	125.36	= <u>18,804.00</u>
				\$73,586.32

In arriving at its extended prices, Worldwide either had annualized its unit prices or had omitted the 12-month period. If Worldwide omitted the 12-month period from its calculations, applying the omission, the resulting bid would have been:

<u>Item 4(a)</u>	<u>Estimate</u>		<u>Unit price</u>		<u>Months</u>	<u>Total</u>
(1)	32	x	\$127.76	x	12	= \$ 49,059.84
(2)	272	x	127.76	x	12	= 417,008.64
(3)	133	x	127.76	x	12	= 203,904.96
(4)	150	x	127.76	x	12	= <u>229,968.00</u>
						\$899,941.44

Item 4(b)

(1)	304	x	125.32	x	12	= \$457,167.36
(2)	133	x	125.32	x	12	= 200,010.72
(3)	150	x	125.32	x	12	= <u>225,576.00</u>
						\$882,754.08

In 45 Comp. Gen. 682 (1966) we held that where there was a discrepancy between the price written in figures and the price written in words, correction was permissible because the mistake was a clerical one apparent on the face of the bid and it was not necessary to go beyond the bid itself to ascertain the bidder's intention. That is, if the bid was interpreted literally, the cost of the item would have equaled 1,000 times the normal cost of pipe as reflected

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in the other bids and previous contracts. Similarly, in B-164453, July 16, 1968, we concluded that where an interpretation of a unit versus an extended price discrepancy would lead to a bid price almost four times as great as the next bid, the intention of the bidder was clear. Dyneteria's annual prices for items 4(a) and 4(b) were \$90,372 and \$135,640.80, respectively, while Worldwide's extended prices for 12 months interpreting the unit prices actually bid as monthly unit prices would have been \$899,941.44 and \$882,754.08, respectively, or approximately 10 and 7 times greater than Dyneteria's prices. Thus, upon Worldwide's verification that its extended prices for items 4(a) and 4(b) were actually intended to be annual prices, the award could have been made to it as low bidder.

However, as noted by the Air Force, when Worldwide was first approached after the opening of bids regarding the apparent mistake in its bid, Worldwide indicated that the figures in the unit columns for items 4(a) and 4(b) were annual figures and that the monthly figures were \$10.6466 for item 4(a) (1/12th of the annual unit price) and \$10.648 for item 4(b) (slightly more than 1/12th of the annual unit price). The arithmetic using \$10.6466 for item 4(a) would confirm Worldwide's extended price for that item; however, the use of \$10.648 for item 4(b) would lead to an extended price for that item different from that set out in the bid. Thus, Dyneteria contends that since the monthly unit prices quoted by Worldwide for item 4(b) are not 1/12th of the annual unit bid prices, there is no clear and convincing evidence of the bid actually intended and it is impossible to determine from the available documents exactly what Worldwide intended to bid.

Following the conversation with the Air Force regarding the error in bid, Worldwide furnished its worksheet for the bid. The worksheet shows that for item 4(a) Worldwide computed an annual price of \$74,995.12, the same amount shown as the total for item 4(a) in the bid. Dividing that amount by 7,044 (587 pickup stations times 12 months) produces a unit price of \$10.64. The worksheet shows an intention to bid \$0.20 less a station for item 4(b). Multiplying the \$0.20 by 7,044 results in a product of \$1,408.80, which when deducted from the total in item 4(a) leaves a balance of \$73,586.32, the same amount shown in the bid as the total for item 4(b).

Since Worldwide's intended price, i.e., its annual price, is as noted above clear from the bid itself, the only mistake actually existing is a clerical one (Worldwide's unit price being an annual one instead of a monthly one). Such an error can be handled under

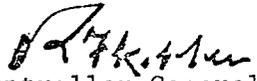
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ASPR § 2-406.2, supra, which calls for a verification from the bidder. However, in so doing, Worldwide's explanation supporting the verification was erroneous, as demonstrated by the Worldwide worksheets. While it would be improper to resort to worksheets to prove the intended price where a lower bidder would be displaced, as assumed by the Air Force, we do not think the rule should be applied to the explanation in support of the verification.

From the foregoing, we conclude that Worldwide's intended unit prices for items 4(a) and 4(b) are established and that it is the low bidder on the contract. Accordingly, the Worldwide late modification which increased the prompt payment discount was for consideration as a part of the bid. Therefore, if Worldwide is found to be a responsible bidder, we recommend that the contract with Dyneteria be terminated for the convenience of the Government and that the remaining portion of the contract be awarded to Worldwide.

Since this decision contains a recommendation for corrective action, a copy is being sent to each of the congressional committees named in section 232 of the Legislative Reorganization Act of 1970, Public Law 91-510, 31 U.S.C. § 1172 (1970).

Deputy


Comptroller General
of the United States