



Decision

Matter of: Applied Construction Technology, Inc.
File: B-258426
Date: January 17, 1995

Sherman A. Botts, Esq., Lathrop & Norquist, for the protestor.
Paul M. Fisher, Esq., and Howard B. Rein, Esq., Department of the Navy, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed awardee to correct a mistake in bid where the agency reasonably concluded that the awardee presented clear and convincing evidence of the existence of a mistake and the intended bid, and the bid is low with or without correction.

DECISION

Applied Construction Technology, Inc. protests the award of a contract to Eastern General Contractors under invitation for bids (IFB) No. N62472-89-B-0031, issued by the Department of the Navy for family housing repairs and modernization at the Naval Education and Training Center, Newport, Rhode Island. Applied contends that the Navy improperly permitted Eastern to correct a mistake in its low bid.

We deny the protest.

The IFB required bidders to submit prices for two line items. Line item 1 called for a price for all of the work set forth in the specifications other than the work associated with 14 housing units specified in line item 2. Within line item 1, subline item 1a requested a lump-sum price for all work set forth in the specifications other than removal and disposal of certain hazardous materials specified in subline items 1b-1h.

The Navy received four bids. Eastern submitted the low bid of \$3,937,466. Applied submitted the next-low bid of \$4,739,523. In response to a request by the contracting officer to review its bid for possible mistakes, Eastern

advised that it had discovered that it had mistakenly omitted costs of \$468,100 for a portion of the work under subline item 1a, and requested that it be permitted to make an appropriate correction in its bid.

To support the request for correction, Eastern submitted a summation spreadsheet used in the preparation of its bid. The spreadsheet included a column for line item 1a consisting of 37 work categories containing item descriptions and prices. The last category, "Amendment D/B Garages & Entrys," listed a price of \$468,100.¹ Even though the \$468,100 figure appeared in the column, the total for the column did not include that amount. That is, the stated total for the column is \$468,100 less than the correct sum of the column entries.

The Navy concluded that Eastern's omission occurred because Eastern failed to update its spreadsheet program to account for the work added by IFB amendment No. 3. Based on the summation spreadsheet and worksheets provided by Eastern and the fact that Eastern's initial bid for subline item 1a was approximately 20 percent below the government's estimate, the Navy permitted Eastern to increase its low bid to \$4,424,566. This increase of \$487,100 included \$486,100, the amount omitted under subline item 1a, plus associated overhead and profit at the rates listed in the worksheet, as well as bond costs. The corrected price included bond costs at a rate lower than that used in Eastern's initially submitted bid; the original worksheets showed a bond rate that was .02 percent higher than the rate used in Eastern's request for correction. When the agency questioned Eastern concerning this inconsistency, Eastern explained that its bond rate is based on a formula under which, as the price increases, the bond rate percentage decreases. The Navy concluded that there was clear and convincing evidence of the mistake and the bid intended. Accordingly, the agency allowed the correction and awarded the contract to Eastern at the corrected price.

Applied alleges that Eastern's originally submitted bid was not the result of a mistake but was intentional. The protester also complains that the agency ignored several unexplained discrepancies and based its decision to allow correction on unproven assumptions; i.e., there was not clear and convincing evidence of a mistake and the intended price.

¹A separate worksheet, also submitted to the agency, showed through a breakdown of costs, how Eastern arrived at this figure. The work in question was set forth in amendment No. 3 to the IFB and required the contractor to, among other things, design and build several garages.

An agency may allow upward correction of a low bid before award if there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation § 14.406.3. Since the procuring agency has the authority to correct such mistakes, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's judgment unless there is no reasonable basis for it. Trataros Constr., Inc., B-250384.3, Feb. 2, 1993, 93-1 CPD ¶ 487. 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.

Based on our review of the record, we find the Navy's decision to allow Eastern to correct its bid to be reasonable. Eastern's summation spreadsheet used in preparing its bid listed the \$468,100 figure under column 1a, and that figure is supported by another worksheet. However, although the \$468,100 figure was listed, the total for column 1a was incorrect in that it did not include \$468,100 entry. From the face of the summation spreadsheet, the agency could reasonably conclude that the \$468,100 was intended to be part of the total for column 1a, and the additional price adjustment for associated overhead and profit and bond cost is readily ascertained by the application of fixed percentages which are apparent from the worksheet material.

We are also unpersuaded by Applied's allegation that the record shows that Eastern intentionally submitted an incorrect bid. The protester asserts that Eastern had "knowledge of two different base bids at the time their bid was submitted" and that the record lacks clear and convincing evidence of the bid intended. Applied points to a bond rate worksheet containing Eastern's "corrected" or intended subtotal amount (before adding bond costs) for line item 1a and the "corrected" lower bond rate. The protester argues that if Eastern had intended to submit the higher bid amount, the summation spreadsheet would have contained the "correct" lower bond rate, not the higher bond rate which appears in the summation spreadsheet. We find this reasoning unpersuasive.

We note that while there is some confusion in the record about when this bond rate worksheet was created, this document appears to be a corrected document, not a contemporaneous worksheet. In any event, even if we were to agree with Applied that the bond rate worksheet showing the correct subtotal and lower rate was, in fact, prepared prior to bid opening, this would not show that the mistake was

intentional. Rather, in our view, it would further support the agency's conclusion that Eastern intended to bid that amount and confirm that it failed to do so because of the mathematical error evident on the summation spreadsheet.

We see no basis to question the explanation for the differing bond rates given by the awardee to the Navy, which is that the lower bond rate for the corrected price is based on a formula which lowers the bond rate as the price increases, and that the rate is generated by a computer program which responds to the base bid amount. In other words, the bond rate applied is simply a function of the base bid amount; thus, contrary to the protester's position, there is nothing suspicious about the wrong bond amount appearing in the summation spreadsheet used in preparing the mistaken bid.

The protest is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel

²Applied also argued that since Eastern's computer created summation worksheet indicated that it was prepared 24 minutes before bid opening, it could not have been relied upon in the preparation of Eastern's bid. Eastern confirmed that the summation sheet was used in preparation of the bid and that the information was communicated to an Eastern representative at the bid opening by telephone. Eastern has submitted phone bills supporting this explanation, and the record provides no basis to question the validity of the summation spreadsheet as evidence of the intended bid.