



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Construction Technology Group, Inc.

File: B-283857

Date: January 18, 2000

Deborah R. Murphey, Esq., and Karl Dix, Jr., Esq., Smith, Currie & Hancock for the protester.

Joseph J. Kokolakis for J. Kokolakis Contracting, Inc., an intervenor.

Larry E. Beall, Esq., and Joseph A. Gonzales, Esq., U.S. Army Corps of Engineers, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably permitted upward correction in low bid where the offeror presented clear and convincing evidence of the mistake--the failure of a computerized spreadsheet to include three line item prices in subtotal and total prices--and the intended bid within a narrow range of uncertainty, and the bid would remain low under any interpretation.

DECISION

Construction Technology Group, Inc. protests the agency's decision to permit an upward correction of the low bid of J. Kokolakis Contracting, Inc. under invitation for bids (IFB) No. DACAS01-99-B-0042, issued by the U.S. Army Corps of Engineers for dining facility construction at MacDill Air Force Base (AFB) in Florida.

We deny the protest.

The IFB contained a bid schedule that required bidders to submit prices on eight items, including five base items and three option items. IFB at BS-1. The requirements in the bid schedule were delineated in numerous detailed specifications and plans/details as shown in the contract. Award was to be made based on the low price for the base bid and all options. IFB at BS-2. The Corps

received eight bids, including Construction Technology's and Kokolakis's. Agency Report (AR), Tab 6, South Atlantic Acting Division Counsel's Statement (SAADCS), at 1. Bids were opened September 8, 1999; Kokolakis's bid was low at \$4,242,500, while Construction Technology's was second low at \$4,693,000. Id.

By letter of September 20, Kokolakis notified the agency that it had discovered a mistake in its bid resulting from the formula contained in the computer-generated spreadsheet used to develop its bid. AR, Tab D, Letter from Kokolakis to Mobile District Contracting Division 1 (Sept. 20, 1999). Specifically, Kokolakis stated that three prices--one each for the base bid and two option items--on a line designated "site work package" on its spreadsheet were omitted from the column totals calculated on the spreadsheet for the base and option items. Id. Kokolakis requested that it be allowed to correct its bid in the amount of \$330,500. In support of its request, Kokolakis submitted an affidavit in which it explained how the mistake was made and attached the following computer-generated documents: (1) the original bid spreadsheet; (2) the revised bid spreadsheet, reflecting the upward correction that Kokolakis was requesting; (3) the formulas used in calculating its bid in its original bid spreadsheet; (4) the application of the formulas used in calculating the bid in its revised bid spreadsheet; and (5) Kokolakis's cost estimates for the labor and materials included under the "site work package" line item on the spreadsheet. AR, Tab D, Affidavit of Awardee, at 1-2, and Exhs. 1-5, Spreadsheets of Awardee. The contracting officer reviewed this documentation and concluded that the evidence was sufficient to support the firm's claim of a mistake in the amount of \$330,500. Upward correction thus was permitted in that amount. AR, Tab 6, SAADCS, at 7. Award then was made to Kokolakis for the base bid only on September 30, in the amount of \$4,257,000. AR, Tab 2, Contracting Officer's Statement, at 2.

Construction Technology challenges the correction, maintaining that the evidence furnished by Kokolakis is not sufficient to support the correction. Protester's Comments at 1, 4.

A bidder seeking upward correction of its bid price prior to award must submit clear and convincing evidence of the claimed mistake and the intended price. Federal Acquisition Regulation (FAR) § 14.407-3(a). Workpapers, including records of computer-generated software spreadsheets/worksheets (hard copy printouts, computer disks, tapes or other software media), may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. H.A. Sack Co., Inc., B-278359, Jan. 20, 1998, 98-1 CPD ¶ 27 at 2. Whether the evidence meets this standard is a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Id. at 3.

The Corps reasonably determined that the evidence clearly established both the existence of the alleged mistake and the amount of the intended bid, and that correction therefore was warranted. First, as for the mistake, Kokolakis's original spreadsheet shows that the prices for the "site work package" line item were not included in the column totals. Specifically, on the first page of the spreadsheet, adjacent to the term "site work package," are the lump sum prices of [deleted] in column five (general contractor costs for the base item), [deleted] in column seven (construction of a north parking lot under option 1), and [deleted] in column eight (construction of a south parking lot in option 2). AR, Tab D, Exh. 1, Original Bid Spreadsheet, at 1. All columns were subtotaled at the top of page two of the spreadsheet; the subtotal for column five was [deleted], column seven [deleted], and column eight [deleted]. *Id.* at 2. However, adding together all of the specification line item prices on page one shows that the subtotals for columns five, seven, and eight do not include the "site work package" prices--that is, the subtotals are understated by the amount of the three "site work package" prices on page one. *Id.* at 1-2. Kokolakis explains that these prices were omitted from the spreadsheet subtotals (and, ultimately, from the total) because Kokolakis mistakenly had inserted a formula in the spreadsheet instructing the program to pick up the "site work package" prices from the eighth line on the spreadsheet, rather than from the seventh line, where those prices were inserted. AR, Tab 6, SAADCS, at 5, and Tab D, Exh. 3, Formulas Used in Calculating Kokolakis's bid in its Original Bid Spreadsheet, at 2. The program thus did not recognize the prices on the seventh line, and did not add them into the subtotals or total. AR, Tab 6, SAADCS, at 5. We find that the alleged mistake is clearly evident from the spreadsheet, and the manner in which the mistake occurred is clear from Kokolakis's explanation. The agency therefore reasonably concluded that a mistake was made.

The documentation furnished also clearly established the intended bid; the amount intended can readily be determined by adding the omitted "site work package" prices to the page two subtotal prices for the base bid and first two option items, and then applying the mark-ups shown on the spreadsheet. In this regard, the omitted "site work package" prices [deleted] for the base bid, [deleted] for the first option item, and [deleted] for the second option item) total [deleted]. AR, Tab D, Exh. 1, Original Bid Spreadsheet, at 1. After adding to this amount the mark-ups shown on the spreadsheet (including profit [deleted] and bonding [deleted] for the base bid and [deleted]-percent mark-ups for the option items), the omitted amount, as determined by the contracting officer, totals [deleted]. AR, Tab B, Contracting Officer's Statement Concerning Mistake in Bid, at 1. While it is not clear why the agency's calculations resulted in an amount \$420 higher than the claimed mistake, this is a minor discrepancy that does not affect the permissibility of the correction. The exact amount of the intended bid need not be established, provided that there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Maple Constr. Co., Inc., B-270073, Feb. 6, 1996, 96-1 CPD ¶ 43 at 2. Such is the case here given the \$120,000 difference between Kokolakis's and the protester's bids. Since the intended

bid is clearly evidenced (within a narrow range of uncertainty) by the documentation provided by Kokolakis, the agency reasonably permitted the upward correction in Kokolakis's bid.

The protester argues that there are other discrepancies in Kokolakis's spreadsheets that should preclude correction. Specifically, the protester points to an error in the spreadsheet Kokolakis provided to show the breakdown of prices that comprised the "site work package" prices; it questions an amount of [deleted] designated for "ELEC," which it claims should not appear on the spreadsheet, since Kokolakis explained it included the electrical work under another line item in its bid. Protester's Comments at 8; Protester's Supplemental Comments at 2. Construction Technology also notes that many item prices, both on the spreadsheet for the "site work package" line item and on the original spreadsheet, do not correspond to those in a "write-in" column on the original spreadsheet; the protester questions Kokolakis's explanation that this is due to its rounding of many of the item prices. Protester's Comments at 8-10.

These alleged discrepancies identified by the protester do not preclude correction. As indicated, the only mistake for which Kokolakis seeks correction is the omission of the "site work package" prices from the spreadsheet subtotals. As discussed, we find that the evidence presented clearly shows precisely how the claimed mistake was made and the amount of that mistake. The alleged discrepancies identified by the protester do not relate to the omitted "site work package" prices clearly established on the original spreadsheet, and would have no effect on the correction of the mistake by adding those omitted amounts to the page two subtotals. Where this is the case, we do not consider such additional discrepancies alleged by a party challenging the requested correction to be relevant to the permissibility of the correction. See Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571 at 4-5; Western Alaska Contractors, B-220067, Jan. 22, 1986, 86-1 CPD ¶ 66 at 6-7.

In any case, we find that the alleged discrepancies are not discrepancies at all. Our review of the "site work package" spreadsheet shows that the [deleted] ELEC figure appearing on that spreadsheet is not included in the total calculated for the spreadsheet items [deleted]. This being the case, Kokolakis's explanation that the [deleted] figure was included on the "site work package" spreadsheet solely for informational purposes--and that the [deleted] was included in its [deleted] price under the "Electrical" line item on page two of the original spreadsheet--is credible. Letter from Kokolakis to General Accounting Office (GAO) 1-2; (Jan. 6, 2000); AR, Tab D, Exh. 5, Spreadsheet of Kokolakis's Cost Estimate for Site Work Package Spreadsheet, at 1. Similarly, we find that Kokolakis's explanation regarding the differences in the "write-in" column prices on the original spreadsheet--that the differences are attributable to rounding--is credible. Letter from Kokolakis to GAO 1 (Jan. 6, 2000). The numbers generally were rounded to a \$500 or \$1,000 increment, and the total effect of the rounding was to reduce the total bid by only approximately \$5,000. AR, Tab D, Exh. 2, Revised Bid Spreadsheet, at 1. This amount is not of a

magnitude that would call into question the credibility of the original spreadsheet, which we have found supports the correction. Continental Heller Corp., supra; Western Alaska Contractors, supra.¹

The protester raises numerous additional arguments challenging the adequacy of the documentation presented by Kokolakis, all of which we find are without merit. For example, Construction Technology maintains that the original spreadsheet and the spreadsheet for the “site work package” line item are insufficient support for the correction because they are undated and unsigned. Protester’s Comments at 5, 8. However, Kokolakis’s representative certified as to the authenticity of the spreadsheets, and since the spreadsheets otherwise appear to be in good order, the fact that they are undated or unsigned does not preclude their consideration in correcting a bid. See Hampton Roads Mechanical Contractors, Inc., B-257908, Nov. 23, 1994, 94-2 CPD ¶ 201 at 4. As another example, the protester maintains that Kokolakis’s affidavit submitted with its bid correction request is defective under Florida law. Protester’s Comments at 5. However, even if Kokolakis’s affidavit were somehow defective, this defect would not preclude correction since Kokolakis need only submit a statement, not a sworn statement, in making its mistake claim. See FAR § 14.407-3(g)(2) (stating that a mistake claim “must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence”). The protester also maintains that Kokolakis improperly failed to submit for review all of its subcontractor quotes and its backup and work papers for all bid items. Protester’s Comments at 5-6. However, this information is entirely irrelevant with respect to the question of whether there is here clear and convincing evidence of the claimed mistake. We conclude that the agency reasonably determined that the evidence furnished by Kokolakis supports the requested upward correction of its bid.

The protest is denied.

The Comptroller General
of the United States

¹ The protester also asserts that, had the difference in the bid prices been greater or smaller, Kokolakis could have tailored its mistake claim by asserting mistakes in different item prices. However, the possibility of fraud on the part of a firm claiming a mistake is not the same as evidence of such fraud. Here, the claimed mistake is supported by the evidence Kokolakis provided to the agency, and there is no evidence of fraud by Kokolakis.