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Decision

Matter of: Metric Constructors, Inc.

File: B-285854

Date: October 17, 2000

Douglas L. Patin, Esq., and Claire E. Kresse, Esq., Spriggs & Hollingsworth, for the protester.

D. Lee Roberts, Jr., Esq., Weinberg, Wheeler, Hudgins, Gunn & Dial, for Dawson Building Contractors, Inc., an intervenor.

Carlton A. Arnold, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq. and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of contracting agency's decision to decline to allow upward price correction of allegedly mistaken low bid is denied where agency reasonably concluded that the worksheets and other supporting material submitted by protester do not provide clear and convincing evidence of the protester's intended bid.

DECISION

Metric Constructors, Inc. protests the U.S. Army Corps of Engineers' denial of Metric's request to correct a mistake in its low bid under invitation for bids (IFB) No. DACA27-00-B-0002, for the construction of an Army Reserve Center at Fort Gillem, Atlanta, Georgia. Metric contends that the agency's decision was unreasonable.

We deny the protest.

The IFB required bidders to submit lump-sum price entries for 14 base bid contract line item numbers (CLINs) and for 5 option CLINs. The base bid CLINs were for the construction of several "primary" buildings, including a training building, unit storage building, medical supply warehouse, parts warehouse and support facility and various miscellaneous tasks such as the installation of metal lockers, shelving and kitchen equipment. The option CLINs included a landscaping upgrade, construction of an unheated storage building and a concrete planter, and the installation of ornamental fencing and an irrigation system. IFB, Bid Schedule, at 3-9.

The Army received seven bids at the May 11 bid opening. Metric submitted the apparent low bid of \$22,762,901; Dawson Building Contractors, Inc. submitted the second low bid of \$25,836,000. Agency Report exh. 2, Abstract of Offers, at 1. By letter dated May 19, Metric advised the Army that in reviewing its bid after bid opening it had discovered a mistake. Protest exh. 1, Request to Correct Bid, at 1. Specifically, Metric stated that it had inadvertently omitted an electrical subcontractor's bid for CLIN 0006, support facility site work, from its base bid. Id. Metric explained that, in preparing its bid, subcontractors' quotations were transcribed onto a "bid card" and prices were "called out" from the bid card, entered into the computer and incorporated into a computer-generated spreadsheet. Agency Report exh. 5B, Memorandum on Alleged Mistake in Bid, at 2. Metric alleged that a mistake occurred because an employee misunderstood certain directions and mistakenly wrote the subcontractor's quote for one base bid item (CLIN 0006) on the back of the bid card, resulting in the unintentional omission of this quote from the base price. To support its mistake claim, Metric submitted its computer-generated estimate and spreadsheet printouts, a copy of its "bid card," and its subcontractor's quotation sheet with price entries that Metric's employee made based on a telephone call with the subcontractor.¹ Metric also submitted three sworn affidavits from two of the firm's senior project estimators and a senior project engineer.² The three employees attested that they had prepared the computer worksheets and the bid and explained the mistake and the intended bid.

Metric's original undated computer sheets, titled "Recap Sheet," consist of three pages.³ The first one and one-half pages contain 17 columns and 76 line entries. Protest exh. 3, Recap Sheet, at 1-2. The first column, titled "Item," lists 76 job elements under the solicitation. For example, line item 25 lists "Masonry," line item 50 lists "Painting and Wall Coverings," and line item 76 lists "Electrical." Id. Columns 2 through 5 provide Metric's own "dry-run" price estimates, including labor, material, "other" and totals for each of the 76 itemized work requirements. Column 6 identifies the subcontractor or supplier whose low price was used in computing Metric's actual bid and column 7 lists the subcontractors' or suppliers' prices for

¹ Metric submitted copies of its original computer-generated worksheets and corrected worksheets.

² For ease of reference, one of the senior project estimators will be referred to in this decision as the senior estimator and the other as the project estimator.

³ The Recap Sheet includes a "run" date of May 11. The protester explains that it did not print the worksheet before bid opening. Rather, in preparing Metric's bid, its senior estimator worked from the computer. Once Metric discovered the error in its bid, it printed out the worksheet and the computer program automatically inserted the "run" date at the top of the printout.

each item. Columns 12 through 16 provide spaces for each of the 5 option prices.⁴ Id. As relevant here, item 76 listed “Electrical” work in column 1, provided the electrical subcontractor’s name in column 6 and listed the subcontractor’s price of \$2,184,301 for electrical work in column 7.⁵ Id. at 2.

Subtotal prices were provided for the “dry run” column, the subcontractor/supplier price column, and for the five option columns. A “general conditions” charge of \$1,264,783 was added to the dry run and subcontractor/supplier prices subtotals and a “manager’s judgment” of [DELETED] was deducted from the subcontractor/supplier subtotal only. Id. No formulas or explanations were provided for either of these two additions and deductions. Additional charges, including “insurance-builder’s risk,” “owner’s protection,” “general liability and vehicle,” “umbrella,” “building permit,” “contingency,” “profit” and “general contractor’s bond,” were listed under the columns on page 2 of the worksheet. The formulas for computing profit and insurance costs, including builder’s risk, owner’s protection, general liability and vehicle and umbrella and the amounts for each of these items were also provided on page 2 of the worksheets. Id. All of these figures were added to arrive at a “total cost,” under both the dry run and subcontractor/supplier amount columns.

Page 3 of the original computer worksheet listed the work requirements and price for each of the actual IFB requirements, that is, the 14 base CLINs and the 5 option CLINs, with totals for the base bid and the base bid with options. There is no explanation on the worksheets, nor has the protester provided any other explanation, of how the 76 items on the first two pages were allocated or assigned to the 14 CLINs under the base bid. Id. at 3. The total base bid price of \$22,144,422 entered on page 3 is the same as the “total cost” listed under the subcontractors’ amount column on page 2.

In his affidavit, the project estimator who received bids from subcontractors for the electrical work explains that he spoke with a representative of the subcontractor who orally recited the subcontractor’s prices for 7 CLINs, including \$754,990 for CLIN 0006, the support facility site work, and \$21,321 for CLIN 0016, the unheated storage building option. Protest exh. 1, Request to Correct Bid, at 19. He states that pursuant to the senior project engineer’s directions, he did not include these two items as part of the base bid. Id. Based on prices of \$1,405,875, \$257,574, \$107,593, \$304,079, \$7,355 for CLINs 0001 through 0005, respectively, and including the bond

⁴ Column 17 was labeled “option 6” and was unused.

⁵ The electrical subcontractor’s price included work related to 6 CLINs in the base bid (CLINs 0001 through 0006, with CLIN 0001 being the training facility and CLIN 0006 the support facility site work), and CLIN 0016, which was the unheated storage building option. Protest exh. 1, Request to Correct Bid, at 7.

costs which Metric's project estimator added to the subcontractor's subtotal, the project estimator calculated a base bid of \$2,184,430 for the electrical work. Id.

In her affidavit, the senior project engineer confirmed that she directed the project estimator to subtract CLINs 0006 and 0016 from the subcontractor's bid because she "understood" that the senior estimator wanted the electrical bid broken down into a base bid, a bid for CLIN 0006 and a bid for the option item CLIN 0016. Id. at 13. The project engineer recalculated the subcontractor's base bid, correcting a mathematical error in the project estimator's calculations to reach a base electrical price of \$2,184,301. Id. She states that she transcribed this base bid total onto the front of a bid card for electrical work and transcribed the \$762,540 and \$21,534 as the electrical work totals for CLIN 0006, support facility site work, and CLIN 0016, storage building option, respectively, onto the back of the bid card. She gave the bid card to the bid team so the electrical prices could be added to Metric's bid. Id.

The senior estimator states in his affidavit that, shortly before bid opening, he was working at the computer to compute Metric's bid. Id. at 3. He asked bid team members to "call out" prices from the bid cards so he could enter them onto the computer spreadsheet. For item 76, the project estimator called out the \$2,184,301 base price from the front of the electrical bid card and the \$21,534 option price for CLIN 0016 from the back of the bid card. Id. The senior estimator explains that he entered these two figures into the computer on the spreadsheet. After bid opening, the senior estimator states that Metric discovered that it had erroneously failed to include the electric subcontractor's bid price for CLIN 0006, support facility site work, in its base bid. Id. This price was listed on the back of the electrical subcontractor's bid card and had not been "called out" and entered onto the computer worksheet. Id. The project estimator explained that the project engineer "thought that I wanted the electric site work broken out separately from the base bid amount. I did not want to separate it from the base bid, but this miscommunication between us lead to the base bid amount shown on the electrical card omitting the Support Facility Site Work from the base bid figure read to me by [the project estimator] just before the bid went in." Id.

After Metric discovered the mistake, the protester prepared a corrected computer spreadsheet, referred to as an "Error Recap Sheet" to show Metric's intended bid. Id. at 4. The Error Recap Sheet follows the same format as outlined above for the Recap Sheet. The senior estimator explains that the correct electrical base bid of \$2,946,841 (incorporating the omitted \$762,540 for the electrical work plus the contractor's bond for the support facility) should have been entered on the computer worksheet for subcontractor/supplier prices at line 76. The senior estimator states that the computer would have totaled the prices, computed the insurance and profit based on the same percentage markups used elsewhere and deducted the [DELETED] manager's judgment. Without any further explanation, the senior estimator states that in correcting the bid, "[t]he Manager's Judgment figure would not have changed." Id. The senior estimator does not discuss the \$1,264,783

“general conditions” figure which was also added to the subtotal prices on both the Recap and the Error Recap Sheets.

The senior estimator also explains that, because Metric was preparing its bid so close to the time set for bid opening, he had “closed out all of the item prices except for Item number 1, Training Building, at approximately 2:40 p.m.” on the computer. Id. Consequently, when the electrical subcontractor’s price came in and was entered on line item 76 of the computer spreadsheet, the computer would have automatically calculated the difference between the subcontractor’s bid and Metric’s dry run estimates and added this difference to or subtracted this difference from the only item total which remained open. Thus, the difference between the subcontractor’s quote and Metric’s dry-run estimate would have been added to Metric’s price for CLIN 0001, Training Building and, in fact, Metric’s Error Recap sheet shows no change in the price for CLIN 0006 but an increase of \$793,619 in the price for CLIN 0001. The protester explains that with this correction, Metric’s corrected total base bid is \$22,938,041 and its corrected total bid with options is \$23,556,520, an amount still substantially below the second low bid of \$25,836,000. Id.

The contracting officer determined not to allow Metric to modify its bid and that the firm could either perform the contract at the originally submitted price or be permitted to withdraw its bid. The agency found that the record did “not demonstrate, with any degree of confidence, Metric’s intended bid.” Agency Report exh. 5B, Memo on Alleged Mistake in Bid, at 5. The contracting officer also determined that Metric’s omission of a subcontractor’s quotation for electrical site work “was not caused by accident or inadvertence of the protester, but instead was a conscious, deliberate, knowing and intentional business choice, on its part, to omit this item from its base bid.” Supplemental Agency Report at 1. The agency based this determination on its reading of the three affidavits submitted by Metric personnel which, the agency states, show “a deliberate and intentional decision to delete this site work from the base bid.” Id. at 3. Because Metric’s omission was intentional, the Army concluded that its bid could not be corrected since correction would allow Metric to recalculate its bid to arrive at a bid never intended before bid opening. Id. at 4.

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. Federal Acquisition Regulation (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, 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). 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 have reviewed the evidence submitted by Metric in support of its claim, as well as the agency's contemporaneous and post-protest rationale for denying the claim. While we are not certain that there was an adequate basis for the agency's conclusion that the omission of the electrical site work for the base bid was intentional and represented a deliberate judgment on Metric's part, we need not resolve that question, because we agree with the agency that the record does not provide clear and convincing evidence of the intended bid.

We assume, for purposes of our analysis here, that Metric inadvertently omitted part of one subcontractor's quote in preparing its bid: the senior project engineer misunderstood the directions from the senior estimator and as a result deducted the electrical subcontractor's \$754,990 quote for CLIN 0006, support facility site work, from the subcontractor's base bid. Metric's submissions suggest one possible computation of the allegedly intended bid price by adding the omitted amount, plus Metric's standard bond, to Metric's base bid subtotal, adding the same fixed amount for general conditions, deducting the same fixed amount for manager's judgment, and applying the same percentages for profit and insurance. However, the agency reasonably concluded that this does not sufficiently establish Metric's intended bid, because the evidentiary documents and the two computer-generated worksheets present conflicts and uncertainties which cannot be resolved to satisfy the clear and convincing standard.

First, as the agency noted, the bid documents do not reveal Metric's "pricing methodology or otherwise represent a pattern of evidence to explain how the bidder calculated the entries. . . ." Agency Report at 3. Specifically, the record, including the computer-generated worksheets, does not show any clear formula or procedure for integrating the 76 items from the first 2 pages of the worksheets into the 14 base bid CLINs contained on both page 3 of the worksheet and the bid schedule. Metric provides no explanation in its affidavits or in any of its submissions of how it calculated its price for each of the 14 separate CLINs on its bid schedule using the 76 items. Thus, it is impossible to isolate the items that comprise Metric's bid for CLIN 0006 and determine whether Metric actually omitted the price for electrical work under this CLIN. Indeed, all that can be done, based on the information provided, is add what Metric represents as its omitted price to the line item price, with no evidence concerning what is already included in the underlying line item price. As the agency found, this gap suggests that Metric either failed to provide all its worksheets or has failed to adequately explain the computation of its bid.

Second, the protester provides no explanation or support for the [DELETED] manager's judgment deduction on page 2 of the computer-generated worksheets.⁶ As noted above, Metric deducted [DELETED] as a "manager's judgment" item from the new subtotal, but has not provided any explanation of the basis of this item and does not show its calculations for arriving at this figure. Presumably, the manager's judgment figure represents the estimator's judgment regarding how much Metric needed to reduce its total bid price to make it more competitive. Because Metric offers no description or explanation of how this figure was arrived at, there is no basis to conclude that it would remain the same with the bid correction, which would have substantially increased the total bid price. The senior estimator simply posits that the [DELETED] manager's judgment figure would not change, even after adding the approximately \$800,000 omitted from the electrical work in CLIN 0006, without any rationale as to why an almost \$1 million upward revision would not affect this figure, and the protester never provided any information which supports the reasonableness of the assertion.

In view of the above, we find that the agency reasonably concluded that Metric did not present clear and convincing evidence of its intended bid and properly denied Metric's request for upward correction.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

⁶ As noted above, Metric also added a \$1,264,783 "general conditions" charge to its price. The protester never specifies what is included in this charge or explains how this figure was calculated. Moreover, Metric does not explain whether this figure would increase or decrease if Metric performed the work itself versus having subcontractors perform the work.