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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Mid Eastern Builders, Inc.

File: B-290717

Date: September 9, 2002

William E. Franczek, Esq., Vandeventer Black, for the protester.
Terence Murphy, Esq., and Patrick H. O'Donnell, Esq., Kaufman & Canoles, for
W.B. Meredith, II, Inc., an intervenor.
Julia C. Novotny, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision to interpret awardee's conflicting bid amounts as reflecting the higher of the two amounts is denied where the agency reasonably determined there was clear and convincing evidence that the awardee intended to bid the higher amount.

DECISION

Mid Eastern Builders, Inc. protests the Department of the Navy's award of a contract to W.B. Meredith II, Inc. under invitation for bids (IFB) No. N62470-00-B-0150 to perform specified construction services in Norfolk, Virginia. Mid Eastern protests that the agency improperly accepted Meredith's bid.

We deny the protest.

The solicitation was issued on April 2, 2002 and, as amended, required bidders to submit three copies of their bid packages to a specified location by 2:00 p.m. on June 6. On that day, the agency timely received five bid packages, including those of Mid Eastern and Meredith. Three Navy officials were involved in the bid opening process. One official opened the bids, a second official read the bid prices, and a third recorded the bids on a bid abstract form. Agency Report, Contracting Officer's Statement, at 2.

The record indicates that, upon opening Meredith's bid package, the first official handed the top copy of Meredith's bid to the second official,¹ who read the bid amount aloud as "\$7,178,689." Agency Report, Enclosure 16, Affidavit of Navy Contract Specialist. The first official then noted that the second and third copies of Meredith's bid appeared to be for an amount of \$2,178,689;² this lower number was then read aloud. *Id.* At that point, a Meredith representative who was attending the bid opening spoke up, asserting, "[I]t's a '7'." Affidavit of Protester's Administrative Assistant, at 2. Upon studying the three copies of Meredith's bid, the Navy official responsible for reading the bids aloud restated Meredith's bid as \$7,178,689. *Id.*

The other four evaluated bids were as follows:

Offeror	Evaluated Bid
Offeror A	\$10,185,000
Offeror B	8,508,600
Offeror C	7,771,000
Mid Eastern	7,577,000

Agency Report, Contracting Officer's Statement, at 3.

Thereafter, by letter to Meredith dated June 6 (bid opening day), the agency advised Meredith as follows: "Bid documents submitted are unclear as to the intent of the amount submitted for the Base Bid, Bid Item 0001. It is requested that you provide original worksheets to clarify your bid price." Agency Report, Enclosure 7.

In response, Meredith submitted affidavits from three of its employees involved in the bid preparation process, each stating that Meredith's intended bid was \$7,178,689. Agency Report, Enclosure 12. Additionally Meredith provided the agency with its computerized worksheets, which disclose the component elements of its bid and lead to a bottom line of \$7,178,689.³ Agency Report, Enclosure 9.

¹ All three copies of Meredith's bid were handwritten originals.

² The IFB sought bids for two line items. Line item No. 1 was for the construction services and line item No. 2 was for network and telephone services. At issue in this protest is the first digit of Meredith's bid for line item No. 1 (that is, whether that number was intended to be a "2" or a "7"). For the sake of simplicity, all references to bid amounts refer to the bid amount for line item No. 1.

³ The worksheets reflect over 40 individual bid elements, along with associated costs, including, for example, "selective interior demolition," "erosion control," "structural St[ee]l," "finish carpentry," "spray applied fireproofing," and "plumbing." *Id.*

Finally, the agency contacted Meredith's bonding company seeking clarification regarding the bid amount on which Meredith's bid bond was based.⁴ The bonding company replied, "The approximate amount of bid was listed as \$8.0 million dollars." Agency Report, Enclosure 11.

Thereafter, the agency determined to accept Meredith's bid of \$7,178,689. This protest followed.

DISCUSSION

Mid Eastern protests that it was improper for the agency to accept Meredith's bid as \$7,178,689. We disagree.

Section 14.407-2 of the Federal Acquisition Regulation (FAR) provides:

Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended.

Additionally, section 14.407-3 of the FAR provides alternative authority for the correction of bids,⁵ stating:

If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the mistake; provided, that if this correction would result in displacing one or more lower bids, such a determination 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.

. . . .

If the bidder alleges a mistake, the contracting officer shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in

⁴ The bonding documents submitted with Meredith's bid package stated the bond amount as a percentage of the submitted bid. Agency Report, Enclosure 3.

⁵ The FAR expressly states, "This authority [in FAR § 14.407-3] is in addition to that in [FAR §] 14.407-2." FAR §14.407-3.

preparing 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((a), (g).

We have explained that a bidder seeking upward correction of its bid after bid opening, but prior to award, must submit clear and convincing evidence that a mistake was made, and the intended bid price. C Constr. Co., Inc., B- 253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198 at 2. The exact amount of the intended bid need not be established, provided 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. Workpapers, including hard copy printouts of computer-generated software spreadsheet, may constitute part of that clear and convincing evidence. Id. at 2-3. Whether evidence of the intended bid amount meets the clear and convincing 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. Here, it is clear that the agency's determination to accept Meredith's bid as \$7,178,689 was reasonable.

First, Meredith's representative clearly asserted at the bid opening that characterization of Meredith's bid as \$2,178,689 was erroneous. In this regard, the agency's mere comparison of this amount to the amounts bid by all other offerors (ranging from approximately \$7.5 million to approximately \$10.2 million) was sufficient to establish that a bid of approximately \$2.2 million constituted a clerical mistake, apparent on the face of the bid. See FAR § 14.407-2. This conclusion is supported by the fact that one of the copies of the bid showed the \$7,178,689 figure.

Next, the agency requested and received sworn affidavits from Meredith employees responsible for preparing the bid, along with copies of Meredith's computerized worksheets, clearly demonstrating that Meredith did not intend to submit a bid of approximately \$2.2 million and, further, establishing that the elements of its bid reflected an intended bid amount of approximately \$7.2 million.

Additionally, the agency sought independent verification from Meredith's bonding company regarding the amount on which Meredith's bid bond was based. The bonding company responded, in writing, stating, "The approximate amount of [Meredith's] bid was listed as \$8 million dollars." Finally, interpretation of Meredith's bid as \$7,178,689 – rather than \$2,178,689 – did not displace any other offeror.

Based on the record presented here, we find nothing unreasonable in the agency's determination that there was clear and convincing evidence of Meredith's intent to

bid the amount of \$7,178,689. Accordingly, we find no basis to question the agency's determination to award a contract to Meredith on the basis of that bid.

The protest is denied.

Anthony H. Gamboa
General Counsel