



Comptroller General
of the United States

15028-1

Washington, D.C. 20548

Decision

Matter of: Hampton Roads Mechanical Contractors, Inc.

File: B-257908

Date: November 23, 1994

Benjamin A. Hubbard, Esq., and David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester. Billie Spencer, Esq., Cynthia Guill, Esq., and John C. Hughes, Department of the Navy, for the agency. Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably allowed low bidder to correct its bid to include omitted labor costs, where the bidder's certified worksheets establish both the existence of a mistake and the amount, within a narrow range of uncertainty, of the intended bid.
2. Erasure of preprinted expiration date at the bottom of the Standard Form 24, Bid Bond, below the properly executed signature blocks, does not render bid nonresponsive because the alteration does not affect the legal liability of the surety to the government.

DECISION

Hampton Roads Mechanical Contractors, Inc. protests the award of a contract to Golden Eagle Contracting Corporation under invitation for bids (IFB) No. N62470-94-B-2220, issued by the Department of the Navy, for renovating a bath house. Hampton Roads contends that Golden Eagle was improperly permitted to correct its low bid price and that Golden Eagle's bid should have been rejected because its bid bond had been altered.

We deny the protest.

The IFB was issued by the Navy on May 6, 1994, to renovate the bath house building "FPR-12" at the Naval Station, Norfolk, Virginia. The IFB required a bid bond to be submitted with the bid.

At the June 7 bid opening, the Navy received nine bids. Golden Eagle's bid of \$308,486 was low. Hampton Roads submitted the next low bid of \$366,711. The other bids ranged from \$368,400 to \$493,000. The government estimate was \$506,000.

Shortly after bid opening, Golden Eagle's Estimator/Project Manager notified the Navy that it had made a mistake in its bid and requested correction. By letter dated June 8, Golden Eagle explained to the Navy that it failed to add in its direct labor cost of \$44,675 in calculating its bid. This letter was accompanied by the company's original estimate sheets and certified the accuracy of the worksheets. Golden Eagle also claimed that its bid price did not account for a last minute quote from its sign subcontractor.¹ Golden Eagle claimed that as a result of its mistakes, and accounting for the fixed bid adjustments based on these increased costs (e.g., an increased bond premium), its bid should be corrected to \$361,092.

After reviewing Golden Eagle's worksheets, the Navy determined, with regard to its failure to include direct labor costs in its bid, that there was clear and convincing evidence of the existence of a mistake and of Golden Eagle's intended bid price, such that correction was warranted. The Navy did not allow correction of the sign subcontract costs. In addition, in reviewing Golden Eagle's worksheets, the Navy found several minor addition errors thereon that slightly lowered Golden Eagle's intended bid, which the Navy accounted for in calculating the corrected bid price. The Navy made award to Golden Eagle at a corrected bid of \$360,858.

Hampton Roads first protests that the agency did not have adequate evidence to permit correction of Golden Eagle's bid because the worksheets supporting the mistake claim were allegedly not in good order.

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. Federal Acquisition Regulation (FAR) § 14.406-3(a); RJS Constr., B-257457, Oct. 7, 1994, 94-2 CPD ¶ 130. In considering a requested upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Correction may be allowed, even where the intended bid price cannot be determined exactly,

¹Golden Eagle's bid was based on a sign subcontract price of \$100. Golden Eagle requested that this price be raised to \$300.

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 in any case after correction. Pregon Const. Co., B-255294; B-255294.2, Apr. 6, 1994, 94-1 CPD ¶ 239; Great Lakes Dredge & Dock Co., B-248007.2, Sept. 3, 1992, 92-2 CPD ¶ 151. 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. RJS Constr., supra. Where, as here, correcting a bid will bring it very close to the next low bid, the documentation supporting the claimed mistake will be subject to particularly strict scrutiny. Id.; J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ 353.

In this case, the agency reasonably determined that Golden Eagle's documentation satisfied the bid correction standard. Golden Eagle submitted nine pages of handwritten bid estimate worksheets to support its mistake claim. The mistake occurred on the last page reflecting the calculation of the final bid. From this page, and as confirmed by Golden Eagle's representative's statement, it is clear that after applying the percentage factor representing (and labeled) taxes and insurance to its total direct labor costs, Golden Eagle failed to include the direct labor costs in calculating its bid price, and instead included only the calculated amount for taxes and insurance. The amount of the direct labor reflected on this final page is the sum of the direct labor amounts calculated on the first eight pages of the worksheets. Under these circumstances, the Navy reasonably found that there was clear and convincing evidence of Golden Eagle's intent to include the cost of direct labor identified in its worksheets, and that correction of the bid to reflect this amount was appropriate.

Hampton Roads does not dispute either that the Golden Eagle worksheets evidence the error claimed or the impact that this mistake had on Golden Eagle's intended bid; rather, the protester claims that the variety of other discrepancies on the worksheets should preclude correction in this case.

First, Hampton Roads argues that the mathematical errors on the worksheets that were accounted for by the agency in the bid correction rendered Golden Eagle's intended bid price ambiguous and incapable of being determined at bid opening. However, all of the mathematical errors were so minor as to be inconsequential, i.e., none involved an amount greater than \$200, and the corrected result was a net decrease in the intended bid price of only \$35. As indicated above, correction is authorized, even if the exact intended bid cannot be established because of discrepancies on the worksheets, provided that the intended bid is established to

be within a narrow range of uncertainty and the bid is low in any case. Precon Constr. Co., supra. The very minor arithmetical errors here do not bring Golden Eagle's intended bid outside the narrow range of uncertainty. Id.

Hampton Roads next notes that because Golden Eagle's worksheets are undated, they cannot be objectively used to establish Golden Eagle's intended bid. However, since Golden Eagle's representative certified as to the authenticity of the worksheets, the fact that they are undated does not preclude their consideration in correcting a bid. Michaels Constr. Co., Inc., B-257764, Nov. 7, 1994, 94-2 CPD ¶ ____.

Hampton Roads also notes the "numerous" alterations and additions on the handwritten, rough worksheets submitted by Golden Eagle, and argues that the worksheets cannot be said to be the "original, unaltered" worksheets from which Golden Eagle calculated its bid price and cannot be considered to be in sufficient good order to support bid correction. Our Office has recognized that worksheets that contain discrepancies or show evidence of erasures can be considered to correct a bid. BAL/BOA Servs., Inc., B-233157, Feb. 9, 1989, 89-1 CPD ¶ 138; Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606. Based on our review, we find the admittedly rough worksheets were in sufficient good order that they could reasonably be relied on to permit the bid correction. Id.; compare RJS Constr., supra.

In sum, we find the agency had a reasonable basis to permit correction of Golden Eagle's bid.


Hampton Roads also argues that Golden Eagle's bid bond was defective in that it contained an erasure at the bottom of the Standard Form (SF) 24 below the spaces allocated for the signatures of the principal and corporate surety. The erasure or "white-out" was to remove the preprinted expiration date of the standard form.

As a general rule, a material alteration to a bid bond, made without the surety's consent, discharges the surety from liability and renders the bid containing the altered bond nonresponsive. Pioneer Constr. Co., Inc., B-227948, Sept. 18, 1987, 87-2 CPD ¶ 279; Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248; Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 CPD ¶ 400. However, where the alteration to the bid bond involves an immaterial matter, such that the enforceability of the bond by the government against the

surety is unaffected, the bid will be considered responsive. G&P Parlamas, Inc., B-226335, Apr. 27, 1987, 87-1 CPD ¶ 593; Brener Bldg. Maintenance Co., Inc., B-219682, Oct. 28, 1985, 85-2 CPD ¶ 475; Montgomery Elevator Co., *supra*.

Here, the white-out is below all the signature blocks on, and basically outside the body of, the SF-24. The white-out covers the fine print on the bottom of the SF-24, as set forth in FAR § 53.301-24, that reads "EXPIRATION DATE 12-31-92." It is apparent, therefore, that this alteration does not affect the legal liability of the surety, but is merely a reaction to the fact that the form had a stale expiration date. While Hampton Roads speculates that the surety may have placed some limitation on its liability in this space, our review indicates that there was insufficient space in the white-out area for such an exception and that the white-out was only large enough to cover the aberrant expiration date. Thus, Golden Eagle's bid was properly considered to be responsive.

The protest is denied.


for Robert P. Murphy
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