



Decision

Matter of: Seabee Construction, LLC

File: B-416436

Date: July 16, 2018

Kevin Eike, Esq., Aldrich Eike, PC, for the protester.
Jason Piskel, Esq., Piskel Yahne Kovarik, for Ascent Mechanical and Plumbing, Inc., the intervenor.
Bruce Rohde, Esq., and Tristan Brown, Esq., Department of the Army, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's refusal to allow protester to correct bid is denied where the existence of a mistake was clear on the face of the protester's bid but the intended bid could not be ascertained substantially from the invitation and the bid itself.

DECISION

Seabee Construction, LLC, of Gresham, Oregon, protests the award of a contract to Ascent Mechanical and Plumbing, Inc., of Spokane, Washington, under invitation for bids (IFB) No. W912DW-18-B-0008, issued by the Department of Army, Corps of Engineers (Corps), for landfill fencing. The protester argues that the agency should have allowed Seabee to correct a mistake in its bid after bid opening, asserting that its intended bid offered the lowest price.

We deny the protest.

BACKGROUND

The IFB¹ was issued on April 18, 2018, under Federal Acquisition Regulation (FAR)

¹ The IFB was amended three times. All citations to the solicitation are to the final version as amended. The agency used a Bates numbering system in preparing the agency report. This decision uses the Bates numbers assigned by the agency for its citations.

part 14, as a total service-disabled veteran-owned small business set-aside. IFB at 14. The IFB stated that a single fixed-price contract would be awarded to the responsible bidder whose bid conforming to the solicitation was the most advantageous to the government, considering only price. Id. at 26, 28. The IFB required bidders to submit in their bid schedules pricing for four contract line item numbers (CLINs) separately, as well as the total sum of the four CLINs. Id. at 17. The bidders were also required to submit their CLIN pricing in another section of the IFB without entering the total sum of the CLINs. Id. at 24-25. The IFB cautioned bidders to review the bidder's price for possible errors in calculation. Id. at 22. The IFB, as amended, established a bid opening date of May 22, 2018. Id., amend. 3, at 2.

Seabee submitted its sealed bid on May 18. Agency Report (AR), Tab 4, Seabee Bid at 59. On May 25, the agency contacted Seabee to verify the unit price for each CLIN. AR, Tab 7, Agency May 25, 2018 8:46 a.m. Email to Seabee at 108. Seabee responded the same day, stating that the CLIN pricing was correct. AR, Tab 8, Seabee May 25, 2018 9:43 a.m. Email to Agency at 110. The agency contacted Seabee again the same day, advising Seabee that the total pricing of Seabee's bid, i.e., the sum of all four CLINs, appeared to have been calculated incorrectly. AR, Tab 9, Agency May 25, 2018 10:42 a.m. Email to Seabee at 113. Specifically, the agency advised Seabee that the total amount stated in its bid was \$847,651.66 whereas the sum of the individual CLINs, which were verified by Seabee, was \$867,651.66. Id. Seabee contacted the agency and requested that the agency permit it to correct the mistake. Contracting Officer's Statement (COS) at 4; AR, Tab 10, Seabee May 25, 2018 10:54 a.m. Email to Agency at 116. In this regard, Seabee contended that an error occurred when inputting the pricing for CLIN 0003, stating that its intended amount was \$335,749.55, rather than \$355,749.55. AR, Tab 10, Seabee May 25, 2018 10:54 a.m. Email to Agency at 116. Seabee also produced an Excel spreadsheet that Seabee stated was used to complete its CLINs to show that Seabee's intended price for CLIN 0003 was \$335,749.55. Id.

On May 29, the agency informed Seabee that its request to correct its bid would not be granted. AR, Tab 12, Agency May 29, 2018 Email to Seabee 10:26 a.m. at 129. On June 1, 2018, award was made to Ascent, based on its bid of \$867,129. AR, Tab 13, Ascent Contract at 133, 135-136; AR, Tab 14, Award Notification. This protest followed.

DISCUSSION

Seabee argues that because the mistake and the intended amount of its bid were readily ascertainable, Seabee should have been allowed to correct its bid pursuant to FAR § 14.407-3 and should have been awarded the contract as the lowest bidder.² Protest at 4-5.

² In its comments responding to the agency report, the protester argues for the first time that it does not seek to correct its bid amount, which has always been \$847,651.66 and therefore has always been the lowest bid; and that the agency's verification of the total
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Section 14.407-3(a) of the FAR provides that if a bidder requests permission to correct a mistake in its bid 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.

Here, the agency explains that while a mistake was obvious on the face of Seabee's bid, the bid amount actually intended by Seabee was not clear. Memorandum of Law at 6. In this regard, the agency explains that there were two reasonable interpretations of the bid as it was submitted--i.e., that the individual CLIN amounts were correct or that the total price was correct--and because only one interpretation, i.e., that the total price was correct, made Seabee's bid the low bid, it would have been inappropriate to allow Seabee to correct the bid. Id.

We agree with the agency that while the existence of a mistake was clear on its face, the bid actually intended was not ascertainable substantially from the invitation and the bid itself. In this regard, the IFB required bidders to provide the price for each CLIN in the two sections of its bid and Seabee provided the same allegedly mistaken amount for CLIN 0003 in each section. IFB at 17, 24-25; AR, Tab 4, Seabee Bid at 60, 67. Further, the agency's May 25, 2018 email specifically requested Seabee's "verification on the submitted bid schedule below" for each CLIN. AR, Tab 7, Agency May 25, 2018 8:46 a.m. Email to Seabee. The email also advised Seabee that the purpose of the email was to "verify the accuracy of your submitted bid schedule" and instructed that, should Seabee consider its "bid to be correct as submitted above," it was to provide a response verifying that the bid was correct. Id. In response, Seabee verified that the submitted CLIN pricing was correct. AR, Tab 8, Seabee May 25, 2018 9:43 a.m. Email to Agency. However, when the CLINs, as provided in the bid and subsequently verified as correct by Seabee, were added, their sum (\$867,651.66) conflicted with the total amount that Seabee provided in its bid (\$847,651.66). As such, while it was clear that there was a mistake in Seabee's bid, the agency had no way to substantially ascertain what bid was actually intended from the invitation and the bid itself.

In this regard, the Excel spreadsheet produced by Seabee on May 25 substantiated Seabee's claim that its bid contained a typographical error in CLIN 0003 as well as that

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bid amount by adding all four CLINs was improper. Protester's Comments at 1-2. Our Bid Protest Regulations do not contemplate the untimely, piecemeal presentation of protest issues, and in this regard, a protester may not delay raising additional protest issues where, as here, the protester should have been aware of those grounds at the time of filing its initial protest. 4 C.F.R. § 21.2(a)(2); see, e.g., Brickwood Contractors, Inc., B-290444, Jul. 3, 2002, 2002 CPD ¶ 121 at 8 n.3. Accordingly, we decline to consider these protest grounds on the merits.

its intended bid amount was \$847,651.66. AR, Tab 10, Seabee May 25, 2018 10:54 a.m. Email at 116, 119. However, the FAR permits the submission of proof outside the confines of the IFB and the bid itself where a bidder is seeking upward correction of its bid amount, not when the bidder is requesting to make a downward correction in its bid that would result in displacing one or more lower bids. See Reynosa Constr., Inc., B-278364, Dec. 15, 1997, 97-2 CPD ¶ 165 at 3. Here, allowing Seabee to correct CLIN 0003 from \$355,749.55 to \$335,749.55 would have resulted in the displacement of Ascent's bid, which was \$867,129. Therefore, on this record, we find the agency acted properly in not allowing Seabee to correct its bid.

The protest is denied.

Thomas H. Armstrong
General Counsel