

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CALVERT GENERAL)	
CONTRACTORS CORP.)	
)	Docket No. MSBCA 1314
Under MPA Contract Nos.)	
287908, 287909 & 287926)	

December 24, 1986

Responsiveness - A bid must be determined responsive from the face of the bid document and not from information subsequently obtained through the verification process or other extrinsic evidence. Therefore, it was not necessary to consider Appellant's argument which criticized the procurement officer's method of bid confirmation since the answers obtained should not have been utilized to determine bid responsiveness.

Responsiveness - The fact that the procurement officer obtained information improperly through the confirmation process and apparently utilized that information to establish the responsiveness of the apparent low bid with no other communicated justification for his determination, does not establish that he did not in fact utilize appropriate procurement methods and rely on correct law to actually make his final determination. The Board, therefore, considered the possible methods that the procurement officer could have used to determine if the apparent low bid was responsive.

Responsiveness - Waiver of Minor Informality - The procurement officer, under State regulations, is given discretion to determine whether an irregularity in a bid is minor or substantive. Here the MPA procurement officer reasonably determined that the failure to provide line item numbers in words was a minor informality which was waivable since it was clear the low bidder intended to be bound by the numbers it provided in arabic only.

Responsiveness - Waiver of Minor Informality - The procurement officer reasonably determined that the failure to place the total bid number in the blank provided at the bottom of the last page of the bid sheets was a minor informality which was waivable since the intended total bid was clear from the bid documents.

Responsiveness - Waiver of Minor Informality - The procurement officer reasonably determined that the failure to initial a correction as required by the bid documents was a minor informality that could be waived since there was no doubt as to what was intended by the correction which was made prior to the submittal of the bid.

Contracts - Rule of Construction - It is an established rule of contract construction that where there is an inconsistency between handwritten and typewritten terms, the handwritten terms will prevail in the absence of any manifestation of intent to the contrary.

Responsiveness - Waiver of Minor Informality - A procurement officer may rely on his common sense and experience and consider prices submitted by other bidders in determining whether an error in a written unit bid price and the correct intended bid are clearly evident on the face of the bid document permitting correction.

Responsibility - The execution of a Proposal Affidavit and a Contract Affidavit pertain to the issue of a bidder's responsibility and not the responsiveness of the bid. The procurement officer may waive as a minor informality the failure to supply such requested documents or information at time of bid opening since they bear on responsibility. Such information may be supplied after bid opening but before award of the contract.

Mistakes in Bids - Discovered Before Award - It was appropriate in this appeal for the procurement officer to increase the bid of the low bidder where the bid documents provided that in the event of a discrepancy between the total bid shown and the total determined by mathematical audit, the amount determined by mathematical audit shall govern.

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OPINION BY MR. LEVY

This is an appeal of the Maryland Port Administration (MPA) procurement officer's final decision denying Appellant's bid protest of the award of MPA Contract Nos. 287908 and 287909 to the Jolly Company, Inc. (Jolly). Appellant argues that Jolly's bids could not be ascertained from the face of the bid documents and that MPA's confirmation of Jolly's bids was improper. MPA contends that Jolly's bids were responsive and that the confirmation process was conducted properly.

Findings of Fact

1. On or about September 11, 1986 MPA issued Request For Quotation (RFQ) for the following three contracts:

- (A) Contract No. 287908 for the construction of a highbay storage building at the McComas Street Terminal.
- (B) Contract No. 287909 for the rehabilitation of Building No. 7 at the McComas Street Terminal.
- (C) Contract No. 287926 for all of the work required under Contract Nos. 287908 and 287909.

Prospective bidders were given the opportunity to bid on each contract individually or as a combined bid under No. 287926.

2. Bids were received and opened on October 14, 1986 with the following results:

	<u>Contract No. 287908</u>	<u>Contract No. 287909</u>	<u>Contract No. 287926</u>
Jolly Company, Inc.	\$2,982,000	\$2,990,000	no bid
Whiting-Turner Contracting Co.	\$3,699,383	\$4,572,075	\$7,831,350
Orfanos Contracting, Inc.	\$4,743,625	no bid	no bid
Appellant	no bid	no bid	\$7,622,500

3. Richard Rehberger, the MPA contract officer who opened the bids, observed what he thought might be irregularities in the two apparent low bids submitted by Jolly. He conferred with the Assistant Attorney General assigned to MPA who advised that Jolly's two bids appeared to be responsive.

4. After the bids were opened, Allan Schwartz, MPA's Reviewing Officer, performed a mathematical audit of all the bids submitted. After he reviewed them, he manually put the line item numbers into his computer to confirm the computations. We note that Mr. Schwartz testified (Tr. p. 20-32) that prior to making the actual audit on Contract No. 287909 he copied the total shown on page 10B onto the upper right corner of page 1B as \$2,990,000.00. Not until after his audit was performed did he realize that the sum of all the line items was actually \$3,390,000.00. It was at this time he scratched through the \$2,990,000.00 and mistakenly placed \$3,990,000.00 above it rather than \$3,390,000.00.

5. Appellant filed its protest with the MPA on October 21, 1986 which raised certain alleged irregularities and errors in Jolly's two bids and requested both bids be rejected. These alleged irregularities and errors were the same ones already perceived by MPA and which formed the eventual basis of MPA's request to Jolly to confirm its bid. The pertinent part of the protest provided:

With regard to Jolly's proposal on Contract No. 287908 the grounds for the protest are as follows:

1. Jolly has failed to comply with the provisions of GP 2.06 A by failing to specify a price in written dollars and cents for Item no. 7001 as required by the proposal form.
2. Jolly's use of an illegible hand written Arabic number for its bid on Item 7001 makes the bid irregular under GP 2.14 A (3).
3. Jolly's omission of a price in written dollars and cents for Item 7001 makes the bid irregular under GP 2.14 A (3).
4. Jolly has failed to comply with the provisions of GP 2.06 A by failing to specify an amount for the TOTAL BID ITEMS as required by the proposal form on page P 13 A.
5. Jolly's omission of a price for the TOTAL BID ITEMS as required by the proposal form on page P 13 A makes the bid irregular under GP 2.14 A (3).
6. Jolly's use of an illegible hand written Arabic number on page P 13 (A) makes the bid irregular under GP 2.14 A (3).
7. Jolly has failed to comply with the provisions of GP 2.06 B by failing to initial the alteration to its bid to Item 1002 on page P 2 A of its proposal.
8. There is a substantial discrepancy in the amount bid on Item 1002 on page P 2 A in that the written words provide for a lump sum bid of Two Hundred Thirty Thousand Dollars and the hand written Arabic numbers appear to provide for a lump sum bid of \$93,993.
9. There is a substantial discrepancy in the amount bid on Item 6002 on page P 8 A in that written words provide for a lump sum bid of Fifteen Thousand Dollars and the type written Arabic numbers provide for a lump sum bid in the amount of \$115,000.
10. Jolly has failed to comply with SGP 2.04 B in that the certification that Jolly has not been a party to any agreement to bid a fixed or uniform price has not been executed at page P 17 A and the Contractors Affidavit at page P 24 A - 27 A has not been executed.

With regard to Jolly's proposal for contract no. 287909 the grounds for the protest are as follows:

1. Jolly has failed to comply with GP 2.06 A by failing to specify a price in written dollars and cents for Item 4003 as required by the proposal form.
2. Jolly's use of an illegible hand written Arabic numbers [sic] for its bid on Item 4003 makes the bid irregular under GP 2.14 A (3).

3. Jolly's failure to include a written dollar and cents bid for Item 4003 as required by the proposal form makes the bid irregular under GP 2.14 A (3).

4. Jolly has failed to comply with GP 2.06 A. by failing to specify an amount for the TOTAL BID ITEMS as required by the proposal form on page P 10 B.

5. Jolly's omission of a price for the TOTAL BID ITEMS as required by the proposal form on page P 10 B makes the bid irregular under GP 2.14 A (3).

6. Jolly's use of an illegible hand written Arabic number on page P 10 B makes the bid irregular under GP 2.14 A (3).

7. Jolly has failed to comply with the provisions of SGP 2.04 B in that the certification that Jolly has not been a party to any agreement to bid a fixed or uniform price at page P 14 B is not executed and the Contractors Affidavit at pages P 21 B - 24 B is not executed.

The defects identified above are only some of the irregularities in Jolly's proposal. An audit of Jolly's proposal on Contract No. 287909 indicates that the Arabic number written on page P 10 B which Jolly's portends to be its total bid is in fact Four Hundred Thousand Dollars lower than the sum of all bid items 1001, 2006, 3003-3006, 3008, 4003, 5003, 6006, 7004, and 8002. Depending upon the amount the Administrator determines Jolly to have bid on item 4003, because of the illegible hand written Arabic numbers and Jolly's failure to provide a written dollar and cents bid, Jolly's bid on Contract No. 287909 could vary substantially from \$3,390,000 to \$3,890,000.

Likewise, because of the several irregularities identified above in Contract No. 287908, depending upon what amounts the Administrator determines Jolly's bid on items 1002, 6002, and 7001, Jolly's bid on Contract No. 287908 could vary substantially from \$2,982,090 to \$3,218,097.

6. Subsequent to Appellant's protest on October 23, 1986, Jolly advised MPA that it had made four additional errors that were not apparent on the face of the documents, totaling \$412,000, in the preparation of its bids. It requested permission to withdraw its bids. Several meetings followed on October 24 and 28 between Jolly and MPA personnel to discuss Jolly's request.

7. Jolly was unable to demonstrate to MPA that the mistakes had in fact been made and on October 30, 1986, MPA formally denied Jolly's request to withdraw its bids. A second letter was sent to Jolly on November 6, 1986 confirming the October 30, 1986 determination and formally advising Jolly that this was a final determination of the procurement officer and advising them of their rights to appeal to this Board. Jolly has not appealed the MPA decision to deny withdrawal of its bids.

8. On October 31, 1986, MPA wrote to Jolly and requested that it confirm its two bids, in pertinent part, as follows:

Contract No. 287908

- (1) Please confirm in both writing and numbers that your bid for Item No. 1002 is \$93,903;
- (2) Please confirm in both writing and numbers that your bid for Item No. 6002 is \$115,000;
- (3) Please confirm in both writing and numbers that your bid for Item No. 7001 is \$20,000;
- (4) Please confirm that you intended the \$2,982,000 figure written at the middle of page P-13A to appear in the "Total Bid Items" blank space provided at the bottom of that page;
- (5) Please confirm in both writing and numbers that your Total Bid Price is \$2,982,000;

Contract No. 287909

- (6) Please confirm [sic] both writing and numbers that your bid for Item No. 4003 is \$1,422,125;
- (7) Please confirm that you intended the \$2,990,000 figure written at the middle of page P-10B to appear in the "Total Bid Items" blank space provided at the bottom of that page;
- (8) The Maryland Port Administration's mathematical audit of your bid resulted in a total bid price of \$3,390,000. Please confirm in both writing and numbers that your Total Bid Price is \$3,390,000.

It also requested Jolly to furnish properly executed proposal affidavits. A follow-up request for confirmation was sent to Jolly on November 6.

9. Appellant sent MPA a letter on November 6, 1986 objecting to MPA's method of confirming Jolly's bids. It stated that, "[r]ather than simply requesting that Jolly confirm what it intended to bid on specific items, Mr. Hasson suggested to Jolly the specific amount that the Administration believes that Jolly had intended to bid on specific items. Since one of the primary reasons for our protest and for the Administration's request for confirmation is the ambiguity in what Jolly bid on certain items, it is highly inappropriate for the Administration to suggest the specific amount that it believes Jolly to have intended to bid."

10. Jolly confirmed its bids to MPA on November 13, 1986 as follows:

Contract No. 287908

- 1) We do not confirm the amount of Ninety-Three Thousand Nine Hundred Three Dollars (\$93,903) as our intended bid for Item No. 1002. As we stated during the recent meetings with your representatives, this Item should be One Hundred Ninety-Three Thousand Nine Hundred Three Dollars (\$193,903);
- 2) We confirm;
- 3) We confirm;
- 4) We do not confirm the amount of Two Million Nine Hundred Eighty-Two Thousand Dollars (\$2,982,000). This number should read Three Million Eighty-Two Thousand (\$3,082,000);
- 5) We do not confirm the amount of Two Million Nine Hundred Eighty-Two Thousand (\$2,982,000). This amount should read Three Million Eighty-Two Thousand (\$3,082,000).

Contract No. 287909

- 6) We confirm;
- 7) We do not confirm the amount of Two Million Nine Hundred Ninety-Thousand (\$2,990,000). This amount should read Three Million Three Hundred Ninety Thousand (\$3,390,000);
- 8) We confirm.

11. MPA preliminarily awarded Contract Nos. 287908 and 287909 on November 14, 1986 to Jolly for \$2,982,000 and \$3,390,000, respectively. Both awards were subject to approval by the Maryland Transportation Authority and the Maryland Board of Public Works.

12. On November 25, 1986 Jolly provided to MPA the properly executed affidavits which were requested in MPA's October 31 letter. Jolly also accepted the awards of the two contracts.

13. The MPA procurement officer issued his final determination to Appellant on November 21, 1986 denying its protest. The reasons for the denial were as follows:

With regard to Contract No. 287908, Paragraphs 1, 2 and 3 of Calvert's protest question Jolly's bid for Item 7001. The MPA's October 31, 1986 request for confirmation requests Jolly to confirm the amount of its bid for that item as \$20,000. Jolly's November 13, 1986 letter confirms the amount of the bid as \$20,000.

With regard to Paragraphs 7 and 8, Calvert's protest questions the amount of Jolly's bid for Item 1002. The MPA's October 31, 1986 letter requests Jolly to confirm that its bid for that item is \$93,903. Jolly's November 13, 1986 letter confirms that the number written on page P2A of its proposal was \$93,903. The fact that Jolly states in its November 13, 1986 letter that it intended to bid \$193,903 is irrelevant with respect to Calvert's protest. Calvert has protested the fact that the number is illegible and therefore the MPA cannot make a decision as to what Jolly intended to bid for that item. The MPA's October 31, 1986 letter asks Jolly to confirm that the number is \$93,903. It is clear from Paragraph 1 of Jolly's November 13, 1986 letter that the figure in question is in fact \$93,903.

With regard to Paragraphs 4, 5 and 6, Calvert's protest questions the total amount of Jolly's bid for Contract No. 287908. The MPA's October 31, 1986 letter requests Jolly to confirm that its total bid price is \$2,982,000. Jolly's November 13, 1986 confirmation letter confirms that the figure written in hand on page P13A was in fact \$2,982,000. The fact that Jolly claims that it intended to bid \$3,082,000 is again irrelevant for the same reasons as stated in the foregoing paragraph. Jolly has simply increased its total amount bid for this contract by \$100,000 in accordance with its claim that it intended to bid \$193,903 for Item 1002.

With regard to Paragraph 9, Calvert's protest questions the amount of Jolly's bid for Item 6002. Paragraph 2 of the MPA's October 31, 1986 letter requests Jolly to confirm that its bid for that item is \$115,000. Paragraph 2 of Jolly's November 13, 1986 confirmation letter confirms that the amount of its bid for Item 6002 is \$115,000.

Pursuant to \$21.05.02.12.C of COMAR, the MPA was entitled to request confirmation of Jolly's bid. The MPA's October 31, 1986 letter served that purpose. The above-referenced section of COMAR specifically references the types of mistakes for which confirmation may be sought. All of the foregoing grounds upon which Calvert's protest is based are mistakes for which confirmation may be sought and was sought by the MPA. Confirmation was received from Jolly.

With regard to Paragraph 10 of Calvert's protest, the MPA has requested that Jolly submit a new properly executed affidavit. Jolly submitted affidavits for this contract which were filled in with all the requested information with the one exception that they were not signed by Mendel Friedman.

For the foregoing reasons, Calvert's protest as to Jolly's bid for Contract No. 287908 is denied.

With regard to Contract No. 287909, the MPA will again address Calvert's protest basically in the same order as the points of the protest are made in Calvert's October 21, 1986 letter.

With regard to Paragraphs 1, 2 and 3, Calvert's protest questions Jolly's bid for Item 4003. The MPA's October 31, 1986 letter requests Jolly to confirm its bid for that item at \$1,422,125. Paragraph 6 of Jolly's November 13, 1986 letter of confirmation confirms Jolly's bid for that item at \$1,422,125.

With regard to Paragraphs 4, 5 and 6, Calvert's protest questions the total amount of Jolly's bid for Contract No. 287909. The MPA's October 31, 1986 letter requests that Jolly confirm its total bid price at \$3,390,000. Paragraph 8 of Jolly's November 13, 1986 letter of confirmation confirms its total bid price for Contract No. 287909 at \$3,390,000.

Pursuant to §21.05.02.12.C of COMAR, the MPA was entitled to request confirmation of Jolly's bid. The MPA's October 31, 1986 letter served that purpose. The above-referenced section of COMAR specifically references the types of mistakes for which confirmation may be sought. All of the foregoing grounds upon which Calvert's protest is based are mistakes for which confirmation may be sought and was sought by the MPA. Confirmation was received from Jolly.

With regard to Paragraph 7 of Calvert's protest, the MPA has requested that Jolly submit a new properly executed affidavit. Jolly submitted affidavits for this contract which were filled in with all the requested information with the one exception that they were not signed by Mendel Friedman.

For the foregoing reasons, Calvert's protest as to Jolly's bid for Contract No. 287909 is denied.

14. Appellant filed a timely appeal with this Board on November 25, 1986.

Decision

Appellant's initial argument concerns the utilization of the confirmation process by the procurement officer in determining the responsiveness of Jolly's two bids. Appellant first argues that the method of confirmation used was improper since it suggested to Jolly the answers the procurement officer was looking for. Second, and more important, was the improper utilization of the confirmation answers by the procurement officer in his determination of Jolly's bids being responsive. Appellant maintains that the sole basis relied upon by the procurement officer in determining that Jolly's bids were responsive was the fact that Jolly confirmed to the procurement officer that it intended to bid the amounts which the procurement officer thought Jolly to have bid.

This Board has repeatedly held that a bid must be determined responsive from the face of the bid document and not from information subsequently obtained through the verification process or other extrinsic evidence. Inner Harbor Paper Supply Company, MSBCA 1064, 1 MICPEL ¶24 (1982); Excelsior Truck Leasing Company, Inc., MSBCA 1102, 1 MICPEL ¶50 (1983); Long Fence Co., Inc., MSBCA 1259, 2 MICPEL ¶123 (1986). It, therefore, will not be necessary to address the first argument raised by the Appellant since consideration of the method of confirmation utilized by the procurement

officer is not necessary for the resolution of this appeal. No matter what method was used the answers obtained should not have been utilized by the procurement officer to determine responsiveness.

We must then turn to Appellant's second argument that the information obtained from Jolly was used improperly. Indeed, a simple reading of the procurement officer's November 21, 1986 final determination suggests that he may have utilized the confirmation process to help him determine the responsiveness of Jolly's two bids. There is a lack of reasoning to explain the actions taken by the procurement officer other than the confirmation by Jolly of several numbers suggested by the procurement officer. We do not see an affirmative finding in the final determination that the mistakes and intended corrections were evident on the face of the bid documents. See COMAR 21.05.02.12C. There is a total lack of support for the procurement officer's determination in his letter. However, this is not to suggest that the procurement officer did not in fact utilize appropriate procurement methods and rely on correct law to actually make his final determination. For the following reasons, we do find that the procurement officer could have found Jolly's two bids responsive from the bid documents even though the confirmation process may have been improperly utilized to support the procurement officer's determinations.

Appellant's letter of protest raises several items of alleged irregularity or error in Contract Nos. 287908 and 287909 with regard to the MPA procurement officer's determination that Jolly's bids were responsive. Because several of these items raise similar questions, we will address them in groups of common interest.

Since all of the alleged irregularities in the bids were discovered after bid opening but before award, they should be resolved pursuant to COMAR 21.05.02.12C(1) which provides:

(1) If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. (Underscoring added).

I

Jolly has not complied with the provisions of GP 2.06A by failing to specify a price in written dollars and cents for Item No. 7001 [contract 287908] and Item 4003 [contract 287909] as required by the proposal forms and this makes the bids irregular under GP 2.14A(3).

Both contracts provide at GP 2.06A as follows:

A. The bidder shall submit his bid upon the blank form(s) furnished by the Administration. The bidder shall specify a price in dollars and cents for each pay item given, and shall show the products of the respective unit prices and quantities written in figures in the column

provided for that purpose, together with the total amount of the bid obtained by adding the amounts of the several items. (Underscoring added).

MPA argues that the underlined portion above indicates that the price was only required to be written in words if a unit price was involved. Since both of the items in question were lump sum quotations, they were not required to be written in words. While we do not agree entirely with MPA's interpretation of this language, we do agree fully with the remainder of its argument that the failure to identify both of these line items in both words and numbers was a minor irregularity which could be waived by the procurement officer.

The procurement officer's authority to waive minor irregularities is found in both contracts at GP 2.14A, Mistakes in Bids, as follows:

A. General. Technicalities or minor irregularities in bids, as defined below, may be waived if the procurement officer determines that it shall be in the State's best interest. The procurement officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive the deficiency where it is [sic] is to the State's advantage to do so.

When at any public opening of bids, a bid appears to be irregular, as herein specified, this fact may be announced when read. Said bid shall be read as other bids and then referred to the procurement officer for consideration and appropriate action thereon in accordance with these General Provisions.

Pending a determination by the procurement officer any Bid having one or more of the following faults will be considered irregular:

- (1) If the bid form furnished by the Administration is not used or is altered.
- (2) If not prepared as directed in GP-2.06.
- (3) If there is an omission of a necessary word(s) or numeral(s) required to make a price unmistakably clear, as well as any other omission; or addition of item(s) not called for.
- (4) If the bid form does not include a price for each item in the unit price schedule.
- (5) If there are additions, conditions or unauthorized alternate bids, unless prior to the date set for the opening of said bids, the Administration notifies in writing, all bidders to whom such bid documents have been issued, that such changes will be permitted.
- (6) If the bidder adds any provisions reserving the right to accept or reject the award.

A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid or proposal from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors. The defect or variation in the bid or proposal is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured and the intent and meaning of the entire bid or proposal is clear. The procurement officer shall either give the bidder or offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or proposal or waive the deficiency, whichever is to the advantage of the State.

See also COMAR 21.05.02.12A and COMAR 21.06.02.03.

We held in Wolfe Brothers, Inc., MSBCA 1141, 1 MICPEL ¶53 (1983), where we considered the failure to initial a bid correction as required by the contract general provisions, that similar language as found in GP 2.14A above appraised all bidders that the failure to prepare a bid as directed would result only in the bid being considered irregular and that the bid would be referred to the procurement officer for appropriate action. There was no express language, nor is there any here, that the procurement officer must reject the bid for failure to comply with the bid preparation direction. We held there, as we hold here, that the procurement officer has discretion to consider whether the alleged irregularity either is waivable or fatal to the responsiveness consideration of the proposal. And this Board will not disturb the procurement officer's discretionary decision unless it finds that it was fraudulent or so arbitrary as to constitute a breach of trust.

When considering both line items here it is clear that Jolly intended to bid \$20,000 for item 7001 in Contract No. 287908 and \$1,422,125 for item 4003 in Contract No. 287909. The failure to provide the words for these respective numbers neither detracts from nor adds to the procurement officer's ability to determine what Jolly intended to bid. It, therefore, would be appropriate for the procurement officer to waive the failure to provide these line item numbers in words as minor irregularities since it is clear that Jolly intended to be bound by the numbers it provided in arabic only.

II

Jolly's use of illegible handwritten Arabic numbers for its bids on Item 7001 [contract 287908] and Item 4003 [contract 287909] makes the bids irregular under GP 2.14A(3).

As MPA so poignantly states in its Agency Report and Brief at p. 15, "[s]eeing is believing." We have observed both of the handwritten numbers referred to and have absolutely no problem in determining that \$20,000 was intended for item 7001 in Contract 287908 and \$1,422,125 was intended for item 4003 in Contract 287909. Mr. Allan Schwartz, an Assistant Contract Officer with MPA, testified at the hearing that these were his immediate interpretations when he audited the bids. (Tr. p. 39-40). Therefore, neither line item was irregular under GP 2.14A(3).

III

Jolly has not complied with the provisions of GP 2.06A in Contracts Nos. 287908 and 287909 by failing to specify an amount for the TOTAL BID ITEMS as required by the respective proposal forms and this makes the bids irregular under GP 2.14A(3).

For similar reasons as provided above under I, we find that Jolly's failure to place the total bid number in the blanks provided at the bottom of page 13A in Contract No. 287908 and at the bottom of page 10B in Contract No. 287909 is a minor irregularity which could be waived by the procurement officer under GP 2.14A(3) of each contract. It is clear to the Board that Jolly intended to bid \$2,982,000 for No. 287908 and \$2,990,000¹ for No. 287909 and to be bound by these amounts. There is no other logical explanation for the two numbers which appear in the middle of the pages nor has Appellant provided any.

The Comptroller General has held that the complete failure to provide a total bid number is a clerical error where prices have been provided for all items in a bidding schedule and the mere mechanical exercise of addition shows the total bid intended. TCI, Limited, Comp. Gen. Dec. B-220578, 85-2 CPD ¶433. Similarly, here, had Jolly provided no number at all, the intended bid total was ascertainable from the addition of the line item totals.

IV

Jolly's use of an illegible hand written Arabic number on page 13A [contract no. 287908] and on page 10B [contract no. 287909] makes the bid irregular under GP 2.14A(3).

Again, "seeing is believing." There can be no mistake that the intended numbers were \$2,982,000 and \$2,990,000, respectively. Accordingly, we find that there is no irregularity under GP 2.14A(3).

V

Jolly has failed to comply with the provisions of GP 2.06B by failing to initial the alteration to its bid on item 1002 on page 2A [contract no. 287908]. There is also a substantial discrepancy in the amount bid on this Item in that the written words provide for a lump sum of Two Hundred Thirty Thousand Dollars and the hand written Arabic number appears to provide for a lump sum bid of \$93,993.

The pertinent part of GP 2.06B in both contracts provides that, "[a]ll erasures or alterations shall be initialed by the signer in ink." As we discussed above, we considered the same problem in Wolfe Brothers, Inc., supra, and found that the failure to initial a correction was a minor irregularity that could be waived by the procurement officer. We make the same determination here since there is no doubt as to what was intended by

¹See later discussion concerning corrected bid of \$3,390,000 based on MPA audit of Contract 287909.

the correction which was made prior to the submittal of the bid. The procurement officer's use of his discretion to waive this mistake as a minor irregularity was correct.

With regard to Appellant's concern that there is a substantial discrepancy between the typewritten words and the handwritten Arabic number, we note that there is an established rule of construction that where there is a conflict between handwritten and typewritten terms, the handwritten terms will prevail in case of an inconsistency in the absence of any manifestation of intent to the contrary. The reasoning behind this rule is that a handwritten provision is a more deliberate and immediate expression of intention than is a typewritten provision. Lashley's Landscaping, Lawn Growth & Maintenance Co., Comp. Gen. Dec. B-181812, 74-2 CPD ¶182; Schapiro v. Chapin, 159 MD 418, 421 (1930). Therefore, we find that there is no inconsistency and that Jolly bid \$93,903 for item 1002.

We make this determination notwithstanding the language found in GP 3.01 which provides in pertinent part:

. . . In the case of a discrepancy between prices written in words and those written in figures, the written words will govern . . .

We do not believe that this language was meant to be applied to the inconsistency we are considering here. GP 3.01 language refers to a discrepancy between numbers written in words and numbers written in figures where both may be typewritten or both handwritten. Here, the discrepancy we are considering is one where one number is typewritten and one is handwritten. In fact, both numbers were originally consistent and had been typewritten. The handwritten inconsistent number was superimposed over the typed number in figures. It is, therefore, reasonable to conclude that Jolly intended to bid \$93,903 since that is the only number which is consistent with the total bid. Additionally, we held in Richard F. Kline, Inc., MSBCA 1116, 1 MICPEL ¶39 (1983) and P. Flanigan & Sons, Inc., MSBCA 1068, 1 MICPEL ¶54 (1983) that the language similar to GP 3.01 for determining price discrepancies should not be applied so as to enforce an unconscionable result.

Appellant contends that the actual number written in by Jolly was \$93,993. However, MPA consistently maintained that the number was \$93,903 for this item. It asserts that this number is not only obvious from appearance but that \$93,903 is the only number which results in the total of all bid items equaling the total bid contained on page 13A. We concur that \$93,903 was the number bid by Jolly for this item.

VI

There is a discrepancy in the amount bid on Item 6002 [Contract No. 287908] in that the number in written words provide for a lump sum bid of Fifteen Thousand Dollars and the number in typed figures provide for a lump sum bid in the amount of \$115,000.

Appellant contends that under the provisions of GP 3.01, supra, the written words of fifteen thousand dollars should prevail over the number in figures \$115,000 for this lump sum line item. MPA argues that the procurement officer acted properly in disregarding the fifteen thousand dollars and

using the \$115,000 since this was the only figure which was consistent with the bid total on page 13A. MPA also argues that the bid of \$15,000 was extraordinarily low and would be unconscionable to hold Jolly to the fifteen thousand dollar typed in words.

We held in both Richard F. Kline, Inc., supra, and P. Flanigan & Sons, Inc., supra, that language similar to GP 3.01 for determining price discrepancies should not be applied with blinders so as to enforce an unconscionable result. The procurement officer should rely on his common sense and experience and consider prices submitted by other bidders in determining whether an error in the written words and the intended bid for the item are clearly evident on the face of the bid document permitting correction.

While the price bid for this item by two other contractors of \$60,000 and \$40,000 is not persuasive either way, we do believe that coupled with the procurement officer's experience it would not be unreasonable for him to determine that \$15,000 was too low for this item. We conclude that had the procurement officer made the appropriate evaluation here, his conclusion that \$115,000 was the intended bid would have had a reasonable basis.

VII

Jolly has failed to comply with SGP 2.04B in that the certifications that Jolly has not been a party to any agreement to bid a fixed or uniform price at page 17A in contract no. 287908 and page 14B in contract no. 287909 have not been executed nor have the Contractors Affidavit at pages 24A-27A and pages 21B-24B respectively.

There are two separate affidavits for both contracts which have not been properly signed by the president of Jolly. One is the Proposal Affidavit and the other is the Contract Affidavit which forms a part of the eventual agreement if awarded. In each of these the president's name has been typed in and the notary completed. We note that in each proposal package the following documents have been properly signed: the actual bids, the Procurement Affirmation, the Minority Business Affirmative Action Certification, and a blank Agreement. There can be no question but that Jolly intended to be bound by its bids. Appellant does not contest this but argues that there is no evidence that Jolly intended to be bound by the terms of the affidavits that were not properly signed.

We disagree with Appellant and find that there is no question but that Jolly intended to be bound by the terms of the respective affidavits. We reach this conclusion from an examination of the entire bid package and all of the documents that were properly signed. But we do not believe that really is the issue to be determined since we have held that the execution of such documents go to the issue of the bidders responsibility and not the responsiveness of the bid itself. We have always maintained that issues of responsibility do not affect responsiveness of the bid and that a procurement officer may waive as a minor informality the failure to supply requested documents or information at time of bid opening bearing on responsibility. The bidder may supply such requested information after bid opening but

before award of the contract. Maryland Supercrete Company, MSBCA 1079, 1 MICPEL ¶27 (1982). Therefore, Jolly's failure to properly sign the four affidavits was not fatal and the procurement officer was correct in allowing the affidavits to be signed after the bids were opened.

VIII

There is Discrepancy Between The Total Bid and the Sum of the Individual Bid Items Under Contract No. 287909.

MPA acknowledges that in fact there was a discrepancy between the actual total bid noted on page 10B and the sum of the separate line items. But MPA contends that the pertinent language of GP 3.01 allowed the procurement officer to correct the total bid.

. . . In the event of a discrepancy between the bid total shown on the bid form and the total determined by mathematical audit of the amounts, lump sum and extensions, that are bid for each item in the price schedule, the amount determined by mathematical audit shall govern. . . .

The audit of Contract No. 287909 verified that the actual total bid based on the sum of the line bids was \$3,390,000. Based on this, the procurement officer increased Jolly's bid by \$400,000 to \$3,390,000.² We conclude that this was an appropriate application of GP 3.01 and the action of the procurement officer was correct.

For the reasons provided above, Appellant's appeal is denied.

²As we noted in Finding of Fact No. 4, the \$3,990,000 number was written on the face of the bid although Mr. Schwartz testified at the hearing that this was a mistake. The correct number is \$3,390,000.