

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of JOHNSON CONTROLS, INC.)	
)	Docket No. MSBCA 1273
Under Dept. of Agriculture Contract)	
No. CSP-202-86)	

May 20, 1986

Mistake in Bid - Discovered Before Award - The procurement officer reasonably denied the request for bid correction and rejected the apparent low bid as nonresponsive where it contained a mistake as to price. Prejudice to the other bidders would result if correction were permitted where the low bid contained a clearly evident mistake on its face that was acknowledged by the low bidder but the intended correct bid was not apparent on the face of the bid.

Mistake in Bid - Discovered Before Award - Where the low bidder neither sought award based on its original bid price, nor requested withdrawal of its bid pursuant to the mistake in bid procedures set forth in COMAR 21.05.02.12C(2), the procurement officer reasonably rejected the clearly erroneous low bid.

APPEARANCE FOR APPELLANT:	None
APPEARANCE FOR RESPONDENT:	Craig A. Nielsen Assistant Attorney General Annapolis, MD

OPINION BY MR. KETCHEN

This appeal is taken from a Department of Agriculture (Agriculture) procurement officer's final decision rejecting Appellant's low bid in the captioned procurement. Appellant maintains that its low bid should be modified to its intended correct bid and award of the contract made to it in the State's best interest.

Findings of Fact

1. On November 27, 1985, Agriculture issued an Invitation for Bids (IFB) for the servicing of the heating, ventilation and air conditioning (H.V.A.C.) and refrigeration equipment at its headquarters facility in Annapolis, Md.

2. The IFB required the successful contractor to provide a scheduled program of maintenance service of the H.V.A.C. and refrigeration equipment as well as to furnish all labor, materials and equipment, including all spare parts, necessary for comprehensive preventative maintenance and to keep Agriculture's systems in proper and continuous operation.

3. Section IV, ¶15, entitled "Duration of Contract," of the IFB's specifications states that the contract was to be for a term of three years beginning on January 1, 1986 and ending on December 31, 1988.

4. A prebid conference and site inspection was held on December 17, 1985 to permit bidders to examine the scope of work. Bidders who attended the prebid conference were informed by Agriculture that the contract would be issued for the entire three year period. The record does not indicate whether Appellant's representatives attended the prebid conference.

5. Agriculture's estimate for the work was \$18,000 for the entire three year contract term.

6. Bids were received and opened on December 27, 1985 with the following results:

<u>Company</u>	<u>Bid Price</u>
Johnson Controls, Inc.	\$ 3,724.00
McQuay, Inc.	\$ 6,000.00 ¹
Cuddeback	\$ 6,375.00
United Technologies	\$12,060.00
Borg Warner	\$14,400.00

7. Appellant's bid was written in words as "Three-thousand seven hundred and twenty-four dollars and no cents" and in figures as "\$3,724.00." The IFB bid sheet did not provide for add or deduct alternates and only required the insertion of a single lump sum bid price for the entire three year contract period.

8. Agriculture's procurement officer requested Appellant to confirm its bid after bid opening. Appellant informed the procurement officer that the price it bid was correct for a one year contract term but that it had inadvertently failed to multiply it by a factor of three for the required contract term. (Tr. 8, 10-11). While Appellant sought to have its bid corrected to the higher price for the three year contract term, it never affirmatively requested that it be awarded the contract at the original, albeit erroneous, price. Initially, Agriculture proposed to award to Appellant after correcting its bid to \$11,172.00

9. On January 3, 1986 United Technologies protested the intended award to Appellant on the ground that Appellant's bid was nonresponsive. United Technologies maintained that Appellant's bid was only for a one year contract while the IFB called for a bid for a three year contract.

¹Both McQuay, Inc., and Cuddeback informed Agriculture that their bids were for one year contracts. Agriculture permitted withdrawal of these bids.

10. On January 27, 1986 the Agriculture procurement officer issued his final decision sustaining United Technologies' protest. His final decision notified Appellant that its bid was rejected as nonresponsive because it was based on a price for a one year contract instead of a contract for the required three years. The procurement officer determined that this discrepancy was a material defect that could not be waived or corrected.

11. Appellant filed a timely notice of appeal with this Board on February 10, 1986.

Decision

Appellant maintains that it should be awarded the contract as the low responsive bidder after correction to its intended price of \$11,172.00. In this regard, Appellant contends that Agriculture's procurement officer improperly denied Appellant's request for correction and rejected its bid as nonresponsive. We find that he did not.

COMAR 21.05.02.12 addresses mistakes in bids discovered prior to award, in pertinent part, as follows:

.12 Mistakes in Bids.

A. General. Technicalities or minor irregularities in bids, as defined in COMAR 21.06.02, 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 to the State's advantage to do so.

* * *

C. Confirmation of Bid. When the procurement officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if any of the following conditions are met:

(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.

(2) A bidder may be permitted to withdraw a low bid if:

(a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(b) The bidder submits proof of evidential value which clearly and convincingly demonstrates that a mistake was made. (Underscoring added).

Maryland procurement law thus permits a procurement officer to cure or waive a mistake in a bid² as to price if it is not material, and it is to the State's advantage to do so. COMAR 21.05.02.12A. A mistake in bid is immaterial if its significance as to price is trivial or negligible in the procurement officer's judgment when contrasted with the total cost or scope of the supplies or services being procured, and its correction would not prejudice the other bidders. COMAR 21.06.02.03; COMAR 21.05.02.12A. Without expressly labeling bid price defects as to their materiality or significance, Maryland procurement law permits correction of apparent bid price errors under certain defined circumstances. Correction to the intended correct bid thus is permitted if both the exact nature of the mistake and the intended correction are clearly evident on the face of the bid document. COMAR 21.05.02.12C(1). See: 52 Comp. Gen. 604, 607 (1973).

A procurement officer necessarily may rely on his experience and judgment in determining whether a mistake in bid price and the intended correct bid are clearly evident on the face of the bid. Richard F. Kline, Inc., MSBCA 1116 (February 24, 1983); The Driggs Corporation, MSBCA 1243 (July 26, 1985). As COMAR 21.05.02.12C recognizes, he may question a bid unreasonably lower than the other bids. In making his determination regarding whether both the mistake and intended correction are evident from the bid, the procurement officer may compare the suspect bid price with prices submitted by the other bidders. Richard F. Kline, Inc., supra. However, he is not permitted to consider extraneous evidence such as a bidder's explanation, backup data, bid preparation materials, or quotes received by the bidder. See: The Driggs Corporation, supra.

Here, Appellant's bid was approximately three times lower than the next low responsive bid for a three year contract. Appellant's bid was almost five times lower than Agriculture's estimate. Agriculture's procurement officer thus properly determined that Appellant's bid was unreasonably lower than other bids submitted and that a mistake was clearly evident on the fact of Appellant's bid. Kline, supra. This determination was confirmed when Appellant acknowledged that it had erroneously submitted a bid calculated on a one year basis and that its intended bid should be derived by multiplying its one year price by three. Under these circumstances, the procurement officer reasonably concluded that Appellant's bid contained an error.

We next address whether the intended correct bid price was clearly evident on the face of Appellant's bid. There is absolutely no indication in the bid itself that it was for other than a three year contract term, or that Appellant merely made a mechanical or arithmetical error in failing to multiply by three the one year price in its bid. In this regard, Appellant filled in the appropriate blank in the bid document indicating that it guaranteed to complete the work in 1095 days. Thus, even though Appellant advises that its bid price shown should have been multiplied by three to reach its intended correct price, we are unable to discern from the face of the bid documents whether Appellant would have bid a price based on the actual bid it submitted multiplied by three or some other price adjusted for the longer contract term. See: 52 Comp. Gen. 604 (1973); 48 Comp. Gen. 748 (1969).

²COMAR 21.01.02.07, in pertinent part, states that, "[t]id means a statement of price . . . offered by a vendor to the State."

To permit correction of Appellant's bid under these circumstances clearly would be prejudicial to other bidders and contrary to the purposes of Maryland procurement law to provide for increased public confidence in the procedures followed in public procurement and to insure the maintenance of a system of quality and integrity. See: Md. Ann. Code, State Finance and Procurement Article, §11-201; 48 Comp. Gen. 748 (1969); Wilkinson & Jenkins Construction Co., Inc., Comp. Gen. Dec. B-182687, February 4, 1975 75-1 CPD ¶177; TADCO Construction Co., Comp. Gen. Dec. B-180171, June 4, 1974, 74-1 CPD ¶298. We reiterate, therefore, that Agriculture's procurement officer properly denied Appellant's request to correct its bid.

Finally, we consider treatment of Appellant's bid where the mistake was clearly evident but the intended correct bid was not. Appellant does not actively seek award based on its original bid price that appeared mistaken on its face, and which unrebutted evidence clearly and convincingly confirms was in error. (Tr. 8, 10). The record is otherwise silent as to whether Appellant seeks to withdraw its bid.

COMAR 21.05.02.12C(2) addresses in discretionary terms the procurement officer's authority to permit a bidder to withdraw a low mistaken bid. The procurement officer acted reasonably here in rejecting Appellant's bid since Appellant did not verify its bid at the price stated, and the bid was clearly in error. See: Sundance Construction, Inc., Comp. Gen. Dec. B-182485, February 28, 1975, 75-1 CPD ¶123; 52 Comp. Gen. 604, 608 (1973). See generally: 37 Comp. Gen. 579, 582 (1958); 52 Comp. Gen. 706, 710 (1973); The Driggs Corporation, MSBCA 1243 (July 26, 1985) at 15-16; Duro Paper Bag Manufacturing Co., Comp. Gen. Dec. B-221377.2, February 14, 1986, 86-1 CPD ¶165.

For the foregoing reasons, Appellant's appeal is denied.

