

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of RICHARD F. KLINE, INC.)

Under MDOT Contract No.)
F-988-501-777)

Docket No. MSBCA 1116

February 24, 1983

Mistakes in Bids - Discovered Before Award - Where the invitation for bids provides that written words govern discrepancies between prices written in words and those written in figures, the procurement officer cannot rely solely on that provision so as to enforce an unconscionable result. If the bidder alleges mistake, the procurement officer must apply COMAR 21.05.02.12 permitting correction if both the mistake and intended bid price are clearly evident on the bid document.

Mistakes in Bids - Discovered Before Award - 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 intended bid are clearly evident on the face of the bid document permitting correction pursuant to COMAR 21.05.02.12 C(1).

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OPINION BY MR. KETCHEN

This appeal is from a Maryland State Highway Administration (SHA) procurement officer's final determination that Appellant's bid was not the lowest of those received in view of a bid discrepancy between a particular unit price as written in words and figures. Appellant contends that the SHA procurement officer abused his discretion in not permitting the correction of its bid in the State's best interest. SHA, on the other hand, contends that its procurement officer correctly applied a solicitation provision giving unit bid prices written in words priority over unit bid prices shown as figures.

Findings of Fact

1. SHA issued an invitation for bids (IFB) requiring submittal of bids by August 3, 1982 for roadway resurfacing, construction of shoulders, modification of drainage facilities, and installation of guardrail on Md Route

80 from its intersection with Md Route 75 to the Montgomery County line.

2. Bids were received on August 3, 1982 as follows:

Appellant	\$297,757.65
Charles J. Miller, Inc.	\$319,043.49
Genstar Stone Products, Inc.	\$327,345.00
Brigham & Day Paving Co., Inc.	\$343,674.50

3. In reviewing the bid submitted by Appellant, the SHA procurement officer noted the following discrepancy between the unit price written in words and the unit price written in figures for Item 108 of Appellant's bid:

Item No.	Approximate Quantities	Description of Items and Prices Bid (In Written Words)	Unit Price Dollars Cts	Amounts Dollars Cts
108	1,665	Linear feet of Removal of Temporary Striping Tape at <u>Twenty Dollars</u> Per Lin. Ft.	0.20	333.00

Appellant's total bid of \$297,757.65 reconciles with the unit price of \$.20 and the extended price of \$333.00 for Item 108.

4. A comparison of Appellant's bid for Item 108 at the unit prices of "twenty dollars" and \$.20 with the three other bids received from contractors for Item 108 shows the following:

<u>Bidder</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Item 108</u>
Appellant	1,665	"twenty dollars"	\$33,300.00
Appellant	1,665	\$.20	\$ 333.00
Charles J. Miller, Inc.	1,665	\$.70	\$ 1,165.50
Genstar Stone Products, Inc.	1,665	\$.25	\$ 416.25
Brigham & Day Paving Co., Inc.	1,665	\$.25	\$ 416.25

5. In compliance with a request by SHA, Appellant confirmed its total bid price of \$297,757.65 by letter dated September 7, 1982. In so doing, Appellant also informed SHA that it had made a clerical error in writing the unit price for Item 108 as "twenty dollars" instead of "twenty cents".

6. By letter dated September 9, 1982, however, the SHA procurement officer informed Appellant that its bid was being considered as \$330,724.65, pursuant to the Standard Specifications - General Provision GP-3.01¹, which provides that in the event of a discrepancy between prices written in words and in figures, prices written in words shall govern. By making this recalculation using the "twenty dollar" unit price, Appellant was displaced by Charles J. Miller, Inc., who bid \$319,043.49.

7. By letter dated October 1, 1982, the SHA procurement officer issued his final decision denying Appellant's written protest of September 9, 1982. The SHA procurement officer concluded that Appellant's bid price properly was read as \$330,724.65 and thus was not low.

8. On October 20, 1982 Appellant filed a timely notice of appeal with this Board.

9. Contract award was made to Charles J. Miller, Inc. on November 1, 1982 and a notice to proceed was issued on December 29, 1982.

¹Standard Specifications General Provision 3.01 provides:

Consideration of Proposals

After proposals have been publicly opened and read, they will be audited for mathematical accuracy and reviewed to determine that there are no irregularities as outlined in GP-2.14 and GP-2.26. Upon completion of the aforementioned audit and review, the results will be made available to the public. In the event of a discrepancy between the unit bid prices and the extensions (product of quantity and unit price), the unit price will govern. 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. In the case of discrepancy between prices written in words and those written in figures, the written words will govern. In the event that the unit price is not included, the unit price shall be the extended price divided by the quantity. (Underscoring added.)

Decision

COMAR 21.05.02.12 provides, in pertinent part, that:

* * *

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.

* * *

The central issue raised by this appeal concerns whether, under the foregoing regulations, the SHA procurement officer was obligated to permit Appellant to correct its alleged bid mistake.

We turn first to the SHA procurement officer's application of GP-3.01. This provision clearly provides that in case of a discrepancy between prices written in words and those written in figures, the written words govern. Here, applying GP-3.01 to the unit price discrepancy, the procurement officer properly read Appellant's unit bid price for Item 108 as \$20 per linear foot of striping tape, instead of \$.20.

However, while G.P.-3.01 properly may be utilized to resolve certain discrepancies in bids, it cannot be applied with blinders. When G.P.-3.01 produces an inequitable result and the bidder alleges error, the procurement officer cannot ignore the mistake and enforce an unconscionable result. He must permit the bidder to correct or withdraw if warranted by COMAR 21.05.02.12.

Where correction of a bid mistake is requested, both the mistake and the intended bid price must be evident on the face of the bid documents. In determining whether the intended bid price is evident on the face of the bid documents, the procurement officer necessarily must rely on his experience and common sense. Compare Edward E. Davis, Contracting, Inc., Comp. Gen. B-187132, November 17, 1976, 76-2 CPD ¶ 429; Comp. Gen. B-173492, November 29, 1971; 46 Comp. Gen. 77, 82 (1966). While the procurement officer, in deciding whether or not to permit correction, may not examine any bid estimates, backup data or quotes received by the bidder, he may review the prices submitted by other bidders relative to the procurement

at hand. Compare 45 Comp. Gen. 682 (1966); Schweigert Construction; Bob Bak Construction, Comp. Gen. B-208114; B-208880, October 20, 1982, 82-2 CPD ¶ 349.

Here Appellant's numerical bid of \$.20 was compatible with what other bidders were quoting for Item 108. In extending its unit prices, Appellant further multiplied the \$.20 price by the total quantity of 1665 to arrive correctly at a total price of \$333.00. Although it had written the words twenty dollars when expressing a unit price for Item 108, it is significant, we believe, that it utilized the \$.20 figure in extending its unit prices.

Of further significance is the similarity between the terms twenty dollars and twenty cents. All that would be required to transform one into the other is a clerical error in filling out the bid document.

COMAR 21.05.02.12 specifies examples of the types of mistakes which may be corrected. These include typographical errors, errors in extending unit prices, transposition errors and arithmetical errors. Based on the foregoing considerations, we conclude that Appellant's bid contained a clerical error and that the intended unit price of \$.20 should have been obvious to the procurement officer from his review of the bid document.

In reaching the foregoing conclusion, we are aware that the procurement officer is afforded considerable discretion in these matters. Further, in reviewing his determinations, we must not substitute our judgment for his. Here, however, the SHA procurement officer never applied COMAR 21.05.02.12 to determine whether Appellant's bid could be corrected as requested. Instead the SHA procurement officer relied solely on G.P.-3.01 to erroneously conclude that Appellant's unit bid price of twenty dollars for Item 108 was binding. (See Agency Report, Tab M)

For the foregoing reasons, therefore, the appeal is sustained. If practical, SHA should partially terminate its contract with Charles J. Miller, Inc. and award the remaining portions of the work to Appellant.

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