

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of THE DRIGGS  
CORPORATION

Under SHA IFB P-560-501-372

)  
)  
)  
)

Docket No. MSBCA 1243

July 26, 1985

Mistake in Bids - Discovered Before Award - Where the invitation for bids provides that the unit price governs discrepancies between a unit price and its extension, such provision must be read in harmony with COMAR 21.05.02.12 (and its nearly identical counterpart in the IFB) permitting correction only if both the mistake and the intended bid price are clearly evident on the face of the bid document. The procurement officer properly denied correction despite the bidders confirmation that its stated unit price was intended where the bid documents reflected that either the unit price or the extended price could reasonably have been intended.

APPEARANCES FOR APPELLANT:

Randall C. Allen, Esq.  
Andrew D. Ness, Esq.  
Lewis, Mitchell & Moore  
Washington, D.C.

APPEARANCE FOR RESPONDENT:

Stephen M. LeGendre  
Assistant Attorney General  
Baltimore, MD

APPEARANCES FOR INTERESTED PARTY:

Andrew F. Dempsey, Jr., Esq.  
Scott A. Livingston, Esq.  
Dempsey, Bastianelli & Brown  
Washington, D.C.

OPINION BY CHAIRMAN HARRISON

This timely appeal is taken from a Maryland State Highway Administration (SHA) procurement officer's decision denying Appellant's protest of the proposed award of the captioned contract to G.A. and F. C. Wagman, Inc. (Wagman). Appellant maintains that its bid should have been automatically adjusted downward to make it the low bid pursuant to Contract General Provision 3.01 (GP-3.01). SHA and Wagman maintain that adjustment of Appellant's bid was not permitted by COMAR 21.05.02.12 and further contend that Appellant's bid protest should be dismissed as untimely.

### Findings of Fact

1. On March 19, 1985, bids were opened on SHA Invitation for Bids (IFB) No. P-560-501-372, involving the reconstruction of the I-95/I-495 interchange near Washington, D.C. The 53 page IFB "Schedule of Prices" contemplated unit prices and their extensions for 287 items to be filled in by the bidder as part of the requirements of the bid. Wagman's bid was \$19,133,674.00 while the bid submitted by Appellant, the only other bidder, was \$19,316,366.50. Included in Appellant's Schedule of Prices for Items 205 and 207 were the following unit and extended prices:

Item Nos.	Approximate Quantities	Descriptions of Items	Unit Price		Amounts	
			Dollars	Cents	Dollars	Cents
205	412,100	Cubic yards of borrow excavation Type I	0	04	\$1,648,400	00
207	1,000	Cubic yards of contingent borrow excavation Type I	0	04	4,000	00

It was announced at bid opening that Wagman was the apparent low bidder. By letter dated March 20, 1985, SHA notified Wagman that its bid was "apparently the lowest responsive and responsible bid."

2. An audit of the bids conducted by SHA pursuant to GP-3.01 was completed on April 23, 1985 and revealed two discrepancies with Appellant's bid. First, there was the discrepancy between the unit price and extended price on Items 205 and 207. Second, the total of the extended prices was incorrectly calculated. Re-addition of the extended prices increased Appellant's bid to \$20,516,366.50.

3. On Items 205 and 207 in Appellant's bid proposal, the unit price for borrow and contingent borrow was stated as 4 cents. However, when the extended prices for these items were divided by the stated approximate quantities, a unit price of \$4.00 was indicated. This latter unit price of \$4.00 was \$1.00 lower than Wagman's unit price on Item 205 (\$5.00) and identical to the SHA's projected unit price. Wagman's unit price for Item 207 was \$1.00. Appellant's extended price for Item 205 (\$1,648,400.00) was identical to the SHA estimate for the item and compatible with Wagman's extended price of \$2,060,500.00.

4. On April 23, 1985, SHA contacted Appellant by telephone in order to reveal the discrepancies and verify the price on Items 205 and 207.

5. On April 24, 1985, Appellant reviewed its bid proposal at the offices of SHA and by letter of even date advised SHA as follows:

We have reviewed our bid proposal for the above referenced contract at Mr. Melsage's office this morning. As reported by your staff's verification of our bid, we agree that the unit prices for Items 205 and 207 as written into the proposal form by us, are in fact four cents per cubic yard for each.

We have reviewed our work sheets and based upon this review, we confirm that when correctly computed, our total bid is \$18,880,490.50 and we are willing to enter into a contract with your administration based upon this corrected total. (Underscoring added).

6. Upon notification of this development, Wagman filed a protest with SHA by letter dated April 26, 1985.

7. By letter dated May 7, 1985, SHA notified Appellant that correction of its bid would not be permitted and that Wagman was, therefore, the low bidder to whom the contract would be awarded.

8. On May 9, 1985, Appellant filed a bid protest with SHA.

9. On May 23, 1985, the SHA procurement officer issued his final decision denying Appellant's protest. On May 30, 1985, Appellant filed its appeal with this Board.

10. At the hearing on July 8, 1985, Mr. William D. Kirk, Jr., Vice President of Appellant, testified that he was responsible for the preparation of Appellant's bid and that Appellant intended to bid 4 cents on Items 205 and 207. (Tr. 20, 23). It cannot be ascertained from a review of the bid documents, however, whether 4 cents or 4 dollars was actually intended, and review of the record as a whole supports either. Compare (Tr. 20, 23-25, 26-36, Agency Report at Tab J, Appellant's Exhibits 2 and 3) with (Tr. 54-64, 93-127, 131-133, Agency Report at Tab N, State Exhibits 1 through 4). While Mr. Kirk testified that Appellant intended to bid four cents on the items in question, he also confirmed that \$19,316,366.50 was the total bid that an employee of Appellant who actually submitted the bid to SHA was instructed to enter into the bid document. (Tr. 58-59, 81-82). Mr. Kirk was unable to explain why the re-addition of the extended prices pursuant to the SHA audit increased Appellant's bid to \$20,516,366.50, \$1,200,000 more than its total bid as submitted. (Tr. 60-64). Mr. Kirk in essence testified that Appellant's bid was whatever the SHA audit revealed it to be. (Tr. 81-83).

#### Decision

As a preliminary matter, the Board shall consider SHA's and Wagman's oral motions to dismiss the appeal on timeliness grounds, the Board having reserved its ruling thereon pending hearing of the merits of the appeal.

SHA and Wagman maintain that Appellant failed to file its bid protest with SHA "not later than 7 days after the basis for protest [was] known or should have been known, whichever is earlier", pursuant to COMAR 21.10.02.03, citing David A. Bramble, Inc., MSBCA 1240 (July 9, 1985).

SHA and Wagman cite several dates as representing the point in time at which Appellant knew or should have known of the basis for its protest commencing with the public announcement at bid opening on March 18, 1985 of the amount of the two bids, a representative of Appellant having been present. Other dates cited are March 21, 1985 when announcement of the bids appeared in the Dodge Reports;<sup>1</sup> March 25, 1985 when announcement of the bids appeared in the Daily Record; March 29, 1985 when announcement of the bids appeared in the Maryland Highways Contractors Association, Inc. contract information bulletin; April 23, 1985 when Appellant received telephonic notification from SHA of the discrepancies; and April 24, 1985 when Appellant advised SHA in writing of the amount of its intended bid.

COMAR 21.10.02.01 C defines a protester as ". . . any . . . bidder . . . who is aggrieved in connection with the . . . award of a contract and who files the protest." Pending completion of the SHA audit pursuant to GP-3.01 on April 23, 1985 and the determination by SHA on May 7, 1985 that the discrepancy was governed by COMAR 21.05.02.12 and that the requested correction was inappropriate, Appellant had not been aggrieved by any action taken by SHA. However, once so aggrieved it timely filed its protest on May 9, 1985. Only upon the completion of the prescribed administrative review of Appellant's bid by SHA, including request for verification of discrepancies and determination thereon, can we say that Appellant knew or should have known of the grounds for its protest, i.e., that Wagman was in fact determined to be the low bidder pursuant to prescribed agency review. Accordingly, the motions of SHA and Wagman to dismiss are denied.

We now address the merits of the appeal.

Appellant contends that it intended to bid a unit price of 4 cents on Items 205 and 207 maintaining that although its unit price for these items was considerably lower than both Wagman's and the SHA estimate on Item 205 it had the means to quote borrow material at 4 cents. Mr. Kirk testified that Appellant's bid of 4 cents on Items 205 and 207 represented wage payments, spread over the total estimated cubic yardage, to a flagman/counter whose responsibility would be to assist in maintenance of traffic and to count the trucks arriving and departing the project. (Tr. 25). According to Mr. Kirk, Appellant intended to recover the cost of the estimated borrow quantities by using excess borrow from its other projects in the general area for the instant project which would result in savings to these other projects of fees associated with disposing of excess soil at private disposal sites and savings in travel time for its trucks, and associated transportation costs, to and from such disposal sites. (Tr. 23-25). Appellant also presented evidence of bids submitted by it in previous proposals as low as 1 cent for certain types of borrow material. (Tr. 26-36).

Attached to the procurement officer's decision (Agency Report at Tab N) is a comparative bid analysis for Type I borrow (over 1,000 cu. yd.) quoted in proposals for the years 1983 and 1984 which revealed an average cost of \$4.16/cu. yd. (a range of \$2.50 to \$10.00) for 1983 and an average cost of \$2.78/cu. yd. (a range of \$1.50 to \$12.85) for 1984. The procurement officer

---

<sup>1</sup>The Dodge Reports is a publication which contains information concerning construction projects. Mr. Kirk testified that Appellant subscribes to the Dodge Reports for the area in which the project is located.

also noted that some of Appellant's former 1 cent bids<sup>2</sup> were for contingent borrow and not Type I borrow and that Appellant had submitted bids on other projects for Type I borrow in the several dollar range. Appellant presented evidence generally explaining the reasons for its bid prices for borrow on these projects. (Tr. 26-36, 47-53).

From its review of the record the Board cannot determine whether 4 cents was in fact intended to be bid by Appellant; conversely the Board cannot say that a bid of 4 cents could not have been intended and that such a bid would have been necessarily unreasonable. Determinative of our decision herein, however, is the finding by the procurement officer with which we agree that while a mistake in the extension of the unit prices for Items 205 and 207 is evident on the face of the bid document, the intended correction is not evident on the face of the bid document since it cannot be ascertained whether the intended unit price was 4 cents or 4 dollars.

Two provisions concerning contract bids are at issue in this appeal. First, GP-3.01 deals with the consideration of bid proposals that have price discrepancies within them. Second, Maryland State Procurement Regulation COMAR 21.05.02.12, incorporated virtually verbatim in Contract General Provision 2.14 (GP-2.14), deals with mistakes in bids.

The basis for Appellant's appeal is its construction of GP-3.01 which states:

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.

Appellant has interpreted the above provision to mean that whenever there is a discrepancy between the unit price and its corresponding extended price, GP-3.01 automatically resolves the apparent discrepancy and sets the intended price as the unit price. To Appellant the only exception to this interpretation arises if this automatic choice of the unit price works an unconscionable result upon the bidder in question.

---

<sup>2</sup>Appellant had supplied the procurement officer with information pertaining to bids for borrow on other projects in connection with its May 9, 1985 bid protest. (Agency Report at Tab J).

Conversely, Wagman and SHA look to the mistake in bid provisions of COMAR 21.05.02.12 and the nearly identical GP-2.14 as requiring denial of Appellant's appeal at least where application of GP-3.01 would displace an otherwise low bidder. COMAR 21.05.02.12 states in pertinent part:

"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 . . . 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 . . . errors in extending unit prices. . . ." (Underscoring added).

In his final decision the SHA procurement officer stated that Appellant's protest was governed by COMAR 21.05.02.12 and not GP-3.01 as Appellant argues. The procurement officer saw the situation as a clear example of bid correction and viewed Appellant's April 24, 1985 correspondence as a request to correct its bid pursuant to the above stated COMAR provision.

Noting that COMAR regulations supercede any contrary agency contract general provision,<sup>3</sup> any conflict between a provision of GP-3.01 and COMAR 21.05.02.12 should be resolved in favor of the COMAR provision. However, in this regard, we also note the general rule in Maryland that subsisting laws (to include implementing regulations) enter into and form a part of a contract as if expressly referred to or incorporated in its terms. See: Downing Development Corporation v. Brazelton, 253 Md. 390, 398, 252 A.2d 849, 854 (1969); Kasmer Electrical Contracting, Inc., MSBCA 1065 (January 12, 1983).

Accordingly, the mistake in bid procedures prescribed by the procurement regulations, actually incorporated into the contract as GP-2.14, must be read together and harmonized with GP-3.01. We are of the opinion that, properly interpreted, GP-3.01 is in harmony with COMAR 21.05.02.12 and that application of both to the price discrepancy at hand compels us to deny the appeal.

This Board has previously addressed the issue of price discrepancy in Richard F. Kline, Inc., MSBCA 1116 (February 24, 1983) and in P. Flanigan and Sons, Inc., MSBCA 1068 (June 17, 1983).

---

<sup>3</sup>See, for example, COMAR 21.01.03.03 which states:

A. Every administration, agency, association, authority, board, bureau, college, commission, committee, council, foundation, fund, department, institute, institution, public corporation, service, trust, university, or other unit of the Executive Branch of State government and any subunit within any of these units are subject to the provisions of these regulations.

The Kline decision involved a discrepancy between the unit price written in words and the extended price. This Board, in interpreting application of GP-3.01 noted that while the provision properly may be utilized to resolve certain discrepancies in bids, it should not be applied with "blindness" so as to produce an inequitable or unconscionable result where the bidder alleges error. When bids were opened, Kline's bid appeared as \$297,757.65 compared to the next low bid of \$319,043.49. However, in reviewing the bid submitted by Kline, the SHA procurement officer noted a discrepancy between the unit price written in words "Twenty Dollars" and the unit price written in figures "0.20" for an item in its bid. The bid for the item appeared as follows:

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

In compliance with a request by SHA, Kline confirmed its total bid price of \$297,757.65 alleging that it had made a clerical error in writing the unit price for the item as twenty dollars instead of twenty cents. The procurement officer, however, advised Kline that its bid was governed by GP-3.01 which provided that in the event of a discrepancy between prices written in words and in figures, prices written in words would govern. By making the recalculation under GP-3.01 using the twenty dollar unit price on the item in question (1,665 linear feet of removal of temporary striping tape), Kline's bid for the item was increased from \$333.00 (20 cents x 1,665) to \$33,300.00 (\$20.00 x 1,665). Thereby its total bid increased to \$330,724.65 and was displaced by the second low bid.

This Board noting that Kline's numerical bid of 20 cents was compatible with what the three other bidders quoted for the item, that Kline multiplied the 20 cent price by the total quantity of 1,665 to arrive correctly at a total price of \$333.00, i.e., that it utilized the 20 cent figure in extending its unit price, that its total bid of \$297,757.65 reconciled with the unit price of 20 cents and the extended price of \$333.00 for the item in question and that there is a similarity between the terms twenty dollars and twenty cents concluded that literal application of GP-3.01 would work an unconscionable result.

To resolve the matter, the Board turned to the COMAR mistake in bid provision. In our analysis we stated:

"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); Schweigart Construction; Bob Bak Construction, Comp. Gen. B-208144; B-208880, October 20, 1982, 82-2 CPD ¶1349."

Kline at p. 5.

We concluded that COMAR 21.05.02.12 governed the matter and that pursuant to its provisions the correction should have been permitted.

In Flanigan, where the SHA procurement officer refused to permit correction of an alleged mistake the discrepancy existed between an item unit price and its extension. SHA audited Flanigan's bid for mathematical accuracy, pursuant to GP-3.01, and determined that a discrepancy existed between the unit price and the extended price for item number 105. This item, as bid by Flanigan appeared as follows:

Item No.	Approximate Quantities	Description of Items and Prices Bid (in written words)	Unit Price		Amounts	
			Dollars	Cts.	Dollars	Cts.
105	100	Per unit week Arrow Board at <u>twent Two dollars</u> per unit week	2	00	20,000	00

As is apparent, the properly extended unit price should have been \$200 instead of \$20,000. We first noted that the SHA procurement officer, "applying contract General Provision GP-3.01, properly read Appellant's bid for unit item No. 105 as \$2.00 per week." However, the unit price involved in the discrepancy was 80 times less than the average unit price (\$165.00) computed from the other six bids received for the same item. As a result, we concluded that this gross difference in unit prices was sufficient to put the procurement officer on notice that a mistake had been made. Flanigan at 5.

We then noted that the standard for bid correction is set forth in GP-2.14 and its genesis COMAR 21.05.02.12 and turned to the guidance set forth in the Kline opinion to determine whether the procurement officer reasonably found that the intended correct bid was not clearly evident on the face of the bid document. Based on the Kline analysis, this Board held that the only reasonable conclusion was that the \$20,000.00 extended price appearing in the bid (which compared favorably to the other bids) was the actual intended bid.



The decisions in Kline and Flanigan make clear that GP-3.01 and COMAR 21.05.02.12 are not mutually exclusive as suggested by Appellant nor, properly interpreted, do they conflict with one another.<sup>4</sup>

When a discrepancy is revealed through the audit of bids conducted pursuant to GP-3.01 the agency first applies the formulæ respecting precedence set forth therein (i.e., words over figures, unit price over extended price, mathematical audit of individual items over bid total shown on the bid form, etc.) to derive a bid price. According to GP-3.01, when there is a discrepancy between the unit price and its extension, the unit price prevails. However, when there is a discrepancy there obviously must be a mistake. The importance of ascertaining the precise nature of a mistake is clearly displayed when the choice of one price or the other is the difference between being low bidder and not being low bidder.

Here is where COMAR 21.05.02.12 comes into play. When the procurement officer asked Appellant for verification of its bid, its response was actually alleging error, i.e., that it had made a mistake. Appellant's statement of a "corrected" total in its April 24, 1985 response acknowledges the mistake in the extended prices for Items 205 and 207 that was apparent to the procurement officer on the face of the bid document. In order to allow correction, however, both the mistake and the intended correction must be clearly evident on the face of the bid document. While the mistake in the extensions clearly was evident, the intended correction is not clearly evident on the face of the bid document because it cannot be determined whether the intended unit price was 4 cents or 4 dollars. Correction was thus properly denied and Appellant's bid, therefore, remains higher than Wagman's.

Our decision herein is supported by review of analogous federal authority which while not binding on this Board is a resource that it occasionally looks to. We first note the similarity between COMAR 21.05.02.12 and its federal counterpart Federal Acquisition Regulation (FAR)

---

<sup>4</sup>As noted above, in the event of a conflict between GP-3.01 and COMAR 21.05.02.12, the COMAR provision would prevail.

14.406<sup>5</sup> regarding the requirement that both the mistake and the intended bid price be ascertainable from the bid documents at least where displacement of a lower bid is involved.

We next examine decisional authority of the Comptroller General in the bid protest context and note that the Comptroller General does not mathematically apply the federal counterpart provision to SHA's GP-3.01 contained

---

<sup>5</sup>The FAR provision states in pertinent part:

**14.406-1 General.**

. . . In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this Section 14.406. Such actions shall be taken before award.

**14.406-3 Other Mistakes Disclosed Before Award.**

. . . The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive.

(a) If a bidder requests permission to correct a mistake 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.

48 C.F.R. §14.406 (1984). See also: Defense Acquisition Regulation (DAR) §2-406 (1976 ed.); Federal Procurement Regulation (FPR) §1-2.406 (1964 ed. circ. 1) [predecessor of FAR].

in federal solicitations but harmonizes, as we have done, such provision with the federal regulatory requirement that both the mistake and the intended correct bid be evident on the face of the bid documents. Compare: W. G. James, Inc., B-218230, May 31, 1985, 85-1 CPD ¶623; Hudgins Construction Co., Inc., B-213307, November 15, 1983, 83-2 CPD ¶570; Bill Strong Enterprises, Inc., B-200581, March 5, 1981, 81-1 CPD ¶173; SCA Services of Georgia, Inc., B-209151, March 1, 1983, 83-1 CPD ¶209; G.S. Hulsey Crushing Co., B-197785, March 25, 1980, 80-1 CPD ¶222; RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD ¶140; Engle Acoustic and Tile, Inc., B-190467, January 27, 1978, 78-1 CPD ¶72.

The Comptroller General's position on a case such as the one before us we believe to be succinctly summarized in his opinion in Hudgins Construction Co., Inc., *supra*,<sup>6</sup> as follows:

<sup>6</sup>Hudgins submitted an apparently low bid of \$2,789,179 for construction work at Langley Air Force Base. However, there was a \$100,000 discrepancy between the unit and extended price for bid item No. 6 as follows:

<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
21,732	\$14.00	\$204,238

The Corps of Engineers (Corps) advised Hudgins that the correct multiplication of the quantity and Hudgins's unit price would total \$304,238, not \$204,238 shown on Hudgins' bid. The Corps pointed out that, under the arithmetical correction provision contained in the IFB, the unit price takes precedence over the extended price where a discrepancy occurs. The Corps advised Hudgins that correction of the extension would result in an upward adjustment of its bid to \$2,889,179, and the bid would no longer be low.

Hudgins confirmed its bid at \$2,789,179, contending that, while a mistake was made in the extension of item No. 6, no error was made in its total bid price. Hudgins contended that it prepared its bid in "reverse" by first filling in its total bid and then providing the required cost breakdown of which line 6 was one item. Hudgins subtracted the sum of the prices for items Nos. 2 through 6 from its total price of \$2,789,179 so that the difference of \$1,487,770 was filled in under item No. 1. Hudgins asserted that, if the proper total of \$304,238, which was \$100,000 more than its bid on line 6, had been inserted under line 6, line 1 would have been \$100,000, less, or \$1,387,770 such that its total price would not have changed. Hudgins submitted a bid worksheet computer printout which it alleged showed its intended bid was \$2,789,179.

Hudgins argued that the agency improperly characterized the error as a "clerical error apparent on the face of the bid" and, therefore, did not have authority to correct the discrepancy under Defense Acquisition Regulation (DAR) S2-406.2 (1976 ed.), to use the arithmetical correction provision, or to evaluate its bid as second low. Hudgins further contended that it provided clear and convincing evidence of a mistake and the bid actually intended.

Although it appears that the Corps applied the solicitation provision regarding arithmetical correction to evaluate the bid at the higher price, we need not address the merits of this basis for rejecting HCC's [Hudgin's] bid since, under applicable case law, HCC's bid could not be considered for award. In our view, HCC's bid is subject to two reasonable interpretations, and under one it is not low. Under these circumstances, we agree that the agency properly determined not to accept HCC's bid.

In circumstances similar to this case, we have permitted the correction of either unit or extended price where the discrepancy lends itself to only one reasonable interpretation ascertainable from reference to the government estimate, the range of other bids, or the contracting officer's logic or experience. Bill Strong Enterprises, Inc., B-200581, March 6, 1981, 81-1 CPD 173. There is no evidence of this nature which provides a basis for ascertaining the cause of the discrepancy between the unit and extended prices and we cannot rely on HCC's worksheet since, in these circumstances, the intended bid should be ascertainable without the benefit of advice from the bidder. SCA Services of Georgia, Inc., B-209151, March 1, 1983, 83-1 CPD 209; DeRalco, Inc., B-205120, May 6, 1982, 82-1 CPD 430.

The agency may not rely on the bidder's confirmation of the bid where both unit and extended prices reasonably could have been intended. 51 Comp. Gen. 283, 287 (1971); G.S. Hulsey Crushing Co., B-197785, March 25, 1980, 80-1 CPD 222. To hold otherwise would permit the bidder to gain an unfair advantage over the other bidders by allowing the bidder discretion, after prices are revealed, to choose between a bid price which results in award and a bid price which does not. See, RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140. This rule is applicable, notwithstanding the solicitation provision for resolving the discrepancy between the unit and the extended prices in favor of one or the other. Bill Strong Enterprises, Inc., supra. The preservation of fairness in the competitive bid system precludes giving a bidder the right to make such an election after the results of the bidding are known. SCA Services of Georgia, Inc., supra. (Underscoring added).

Hudgins Construction Co., Inc., supra at pp. 2-3.

In summary, both our own decisions in Kline and Flanigan, Maryland's procurement law and regulations and analogous federal authority preclude giving a bidder the right to make an election between his unit and extended price, where either could have been reasonably intended, after the results of the bidding are known.

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