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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: SDV Construction Group, LLC

File: B-400703

Date: January 7, 2009

James Baldino for the protester.

Mark G. Machiedo, Esq., Department of Veterans Affairs, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A bidder's failure to precisely follow instructions in invitation for bids for construction project with respect to how to enter bid prices for deductive bid items can be corrected as an obvious clerical mistake where the intended bid is evident from the face of the bid.

DECISION

SDV Construction Group, LLC of Denville, New Jersey protests the award of a contract to JR Services, LLC (JRS) of Washington, D.C., under invitation for bids (IFB) No. VA-243-08-IB-0383, issued by the Department of Veterans Affairs (VA), for construction work. SDV contends that the VA improperly permitted JRS to correct a mistake in its bid.

We deny the protest.

The IFB was issued as a service-disabled, veteran-owned small business (SDVOSB) set-aside to renovate the operating room suite at the VA Medical Center in Brooklyn, New York. The amended IFB required bidders to submit separate bid prices for a "construction base bid" and five "deduct alternates." The base bid was for the entire project without regard to the "deduct alternates." For the "deduct alternates," the IFB's bid instructions indicated that the price inserted for each alternate would represent the net price if the work described in the particular alternate were subtracted from the base bid. The award could be made for the base bid or any one of the deduct alternates. IFB amend. 4, at 2-5.

Three bids were received by the September 22, 2008 bid opening. JRS's and SDV's bids were as follows:

	JRS	SDV
Base Bid	\$9,160,126	\$9,243,000
Deduct Alternate #1	675,000	8,497,000
Deduct Alternate #2	1,055,750	8,176,000
Deduct Alternate #3	1,576,750	7,811,000
Deduct Alternate #4	2,043,000	7,569,000
Deduct Alternate #5	2,115,150	7,439,000

Agency Report (AR), exh. 5, Bid Abstract; exh. 6, JRS's Bid.

On September 23, SDV filed an agency-level protest challenging among other things, any award to JRS on the basis that the bid was “nonresponsive based on its failure to comply with the alternate pricing requirements of the IFB.” AR, exh. 13, Agency-Level Protest, at 1-2. The VA concluded that the bid was responsive to the IFB, but it requested that JRS verify its bid, given that the bid contained an obvious error, in that JRS did not deduct the base bid price from each deduct alternate as contemplated by the IFB, but instead inserted the amount that was to be deducted from the base bid for each deduct alternate. See AR, exh. 10, Agency Letter Requesting Verification of Bid; exh 12, Agency Memorandum at 2-3, at 1. JRS confirmed its base bid and verified that its deduct alternate bids were, respectively, \$8,485,126, \$8,104,376, \$7,583,376, \$7,117,126, and \$7,045,021. AR, exh. 11, JRS Verification of Bid. This verification is consistent with deducting the amounts actually inserted for the deduct alternates in JRS's bid from JRS's base bid. The agency denied the protest, and on October 1, awarded deduct alternate #2 to JRS at the bid price of \$8,104,376. This protest to our Office followed.

SDV contends that the agency improperly permitted JRS to correct its bid from its alternate #2 bid amount of \$1,055,750 to the award price of \$8,104,376. Under FAR § 14.407-2, the contracting officer may correct apparent clerical mistakes in bids, so long as the contracting officer obtains from the bidder a verification of the bid intended. We have recognized that a bidder's failure to follow IFB instructions precisely with respect to how to enter bid prices for deductive bid items is an obvious clerical mistake that can be corrected where the intended bid is evident from the face of the bid. See Transcon Assocs., B-204991, Apr. 20, 1982, 82-1 CPD ¶ 361 at 2-3. Here, it is clear from the face of JRS's bid that it mistakenly inserted the amount that it intended to deduct from the base bid in the deduct alternate items on the bidding sheet rather than inserting the net amount after the deduction. As noted, the agency verified the intended bid with JRS. While SDV notes that the agency initially determined that this was a minor informality that was waivable under FAR § 14.405 instead of a clerical error correctable under FAR § 14.407-2, the record here demonstrates that the error was a correctable clerical error and that the agency complied with FAR § 14.407-2 in correcting the bid.

SDV also questions whether JRS will comply with the subcontracting limitations imposed on SDVOSB concerns, given that JRS is assertedly a “pass through” for a non-SDVOSB concern. However, JRS’s bid does not take exception to the IFB’s subcontracting limitations and its bid is therefore responsive. The issue whether an SDVOSB concern will comply with a limitation on subcontracting provision is a matter of responsibility, and the contractor’s actual compliance with the provision is a matter of contract administration. Advant-EDGE-Solutions, Inc., B-400367.2, Nov. 12, 2008, 2008 CPD ¶ 210, at 4-5 n.3. The VA has determined that it has no basis to find that JRS will not comply with the subcontracting limitation, and SDV has provided our Office with no reason to question the agency’s judgment in this regard.

The protest is denied.

Gary L. Kepplinger
General Counsel