



Comptroller General
of the United States

Washington, D.C. 20548

(Lebowitz)

Decision

Matter of: W.H. Hussey & Associates, Inc.
File: B-237207
Date: February 1, 1990

Benjamin Hubbard, Esq., Outland, Gray, O'Keefe, & Hubbard, for the protester.
Michael Sterling, Esq., Vandeventer, Black, Meredith, & Martin, for the interested party, Virtexco Corporation.
Vasio Gianulias, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Linda Lebowitz, Esq., Andrew Pogany, Esq., and Michael Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency determination allowing a bidder to correct an alleged mistake in its apparent low bid prior to award was proper where the bidder presented clear and convincing evidence establishing both the existence of its mistake and its intended bid price, and the corrected bid would remain low by approximately 6 percent.

DECISION

W.H. Hussey & Associates, Inc., protests the award of a contract to Virtexco Corporation under invitation for bids (IFB) No. N62470-89-B-3783 (IFB-3783), issued by the Department of the Navy for repairs and alterations to the Commissioned Officer's Mess at the Naval base in Little Creek, Virginia Beach, Virginia. Hussey argues that the Navy improperly permitted Virtexco to make an upward correction of its apparent low bid.

We deny the protest.

Bid opening under IFB-3783 was held on September 21, 1989. Virtexco submitted the apparent low bid of \$143,824. Hussey, the second low bidder, bid \$760,000, and the government estimate was \$735,500. At the same time, bids

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were opened for IFB No. N62470-89-B-3767 (IFB-3767), issued by the Navy for the relocation of the mechanical room at the same Naval base, and Hussey submitted the apparent low bid of \$123,456. Virtexco, the high bidder, bid \$717,350, and the government estimate was \$93,400.

Subsequent to the bid openings, Virtexco alleged that it had inadvertently "switched" the two bid amounts it submitted, placing the wrong bid amounts on the wrong bid documents. Virtexco requested an opportunity to correct its mistakes. It argued, based on its certified worksheets and subcontractor quotes, that it intended to bid \$717,315 for IFB-3783 and \$143,824 for IFB-3767. After reviewing the evidence submitted by Virtexco, the agency concluded that this evidence clearly and convincingly supported Virtexco's position that it had made a mistake in its bids. The agency allowed Virtexco to make an upward correction of its bid for IFB-3783 to \$717,315 and subsequently awarded a contract under this solicitation to Virtexco, still the apparent low bidder, for the corrected amount.^{1/} Hussey's protest followed.

Hussey argues that because Virtexco admitted it made a mistake in its apparent low bid, Hussey became the low bidder, and that it was subsequently displaced as the low bidder when the agency improperly allowed Virtexco to make an upward correction of its bid.

An agency may permit upward correction of a low bid before award, to an amount that is still less than the next low bid, where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3(a) (FAC 84-44); Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. Whether the evidence furnished meets the clear and convincing standard is a question of fact, and we will not question an agency's determination based on the evidence unless it is unreasonable. Americorp, B-232688, Nov. 23, 1988, 88-2 CPD ¶ 515. In this respect, in considering upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and

^{1/} Hussey also argues that the agency improperly allowed Virtexco to correct its mistake in bid for IFB-3767. However, regardless of the agency's correction of Virtexco's bid for that solicitation, Hussey remained the low bidder, and the agency awarded it the contract for \$123,456. Therefore, the issue of Virtexco's mistake in bid under that solicitation is academic.

indicate the intended bid price, and there is no contravening evidence. Lash Corp., 68 Comp. Gen. 232, supra.

Here, while Virtexco submitted the apparent low, responsive^{2/} bid of \$143,824, there was a large disparity between its bid and Hussey's second low bid of \$760,000 and the government estimate of \$735,500. This disparity, coupled with the disparity in the other solicitation for which Virtexco simultaneously submitted a bid, reasonably indicated to the agency that Virtexco had made a mistake in its bid. Virtexco's certified worksheets, which were properly captioned with reference to the Commissioned Officer's Mess project, and accompanied by the subcontractor quotes used by Virtexco to calculate its intended bid, confirmed that Virtexco had made a mistake in its bid and intended to bid \$717,315 for this project. Specifically, Virtexco listed on its worksheets the amount of \$717,580 as the total price for the project and listed \$717,315 as the base bid amount. We therefore believe that the agency reasonably determined that Virtexco's evidence of its mistake and intended bid price was clear and convincing, and our Office has no basis to question this determination.

Moreover, even though the amount by which the agency allowed Virtexco to make an upward correction of its low bid was significant (\$573,491), Virtexco's bid as corrected still remained low and Virtexco did not displace any other bidders. In fact, Virtexco's bid as corrected was still \$42,685 less than Hussey's second low bid, a margin of approximately 6 percent. See Continental Heller Corp., B-230559, June 14, 1988, 88-1 CPD ¶ 571. Accordingly, the award to Virtexco was proper.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} Virtexco submitted its bid on the proper bid form with the correct solicitation number and took no exceptions to the tasks required to be performed by the specifications.