

Martin



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hercules Demolition Corporation of Virginia
File: B-223583
Date: September 12, 1986

DIGEST

Where a bidder alleges after opening but before award that there is a mistake in its low bid and presents clear and convincing evidence of the existence of the mistake and how it occurred but presents no persuasive evidence supporting its intended bid, the bid may not be corrected. However, where the evidence clearly shows that the intended bid would also be low, even though the intended bid cannot be established with certainty, the claim of error may be waived by the bidder and award can be made at the initial uncorrected price as there is no prejudice to other bidders.

DECISION

Hercules Demolition Corporation of Virginia (Hercules) protests the refusal of the Department of the Navy to permit correction of an alleged \$100,000 mistake discovered in its bid after bids for the demolition of two buildings were opened in response to invitation for bids (IFB) No. N62477-85-B-3077. Hercules' bid was \$244,321, the only other bid was \$393,000, and the government's estimate was \$425,000.

We deny the protest.

After reviewing the bids, the Navy asked Hercules to verify its price; Hercules responded that it had mistakenly bid \$100,000 less than it intended to bid and requested correction. The Navy acknowledged that the evidence submitted showed that Hercules had made a mistake but denied the request for correction on the basis that there was no clear and convincing evidence to show Hercules' intended bid. Accordingly, the contracting officer informed Hercules that it would be allowed to withdraw its bid.

The authority to permit bidders to correct mistakes alleged after bid opening but before award generally is vested in the

036714/131023

procuring agencies. Guardian Construction, B-220982, Mar. 6, 1986, 86-1 CPD ¶ 224. Such mistakes may be corrected where there is clear and convincing evidence establishing both the existence of the mistake and the bid actually intended. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3 (1985). Since the weight to be given evidence submitted in support of an asserted mistake is a question of fact, we will not disturb an agency's determination regarding bid correction unless there is no reasonable basis for the decision. Montgomery Construction Co., Inc., B-221317, Feb. 28, 1986, 86-1 CPD ¶ 210 at 3.

Hercules has submitted its original worksheets in support of its request for correction. These work papers include a list of cost estimates which actually add up to \$373,153 but which show an erroneous total of \$273,153. The apparent cause of this discrepancy is shown by an attached calculator tabulation which adds up to \$273,153 but which includes only \$62,088 for the cost of demolition and removal of the wood frame structures; the actual cost for this particular item of work is shown on Hercules' handwritten worksheet as \$162,088. Hercules explains that it mistakenly entered \$62,088 into its calculator instead of \$162,088, the correct figure, when it was adding up the cost of all work items to compute its total bid price. Therefore, Hercules requests that its bid of \$244,321 be increased by \$100,000.

The Navy points out that, even though it is clear that Hercules incorrectly entered the figures into its calculator, resulting in a total of \$273,153 rather than the correct total of \$373,153, the actual bid submitted by Hercules was for a total price of \$244,321. This figure is found only in a handwritten note at the bottom of a worksheet which states:

"Discount Hauling
Bid 244,321
A.L.A."

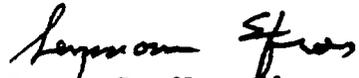
The Navy contends that the bid and the work papers submitted by Hercules do not indicate what price Hercules actually intended to bid and that the "alleged \$100,000 mistake does not carry over to the discounted bid of \$244,321 actually submitted." Hercules contends that the note at the bottom of its worksheets reflects its intention to discount \$28,832 from its \$90,000 cost estimate for hauling. This, Hercules insists, is a standard practice in the construction industry when the cost estimate appears to be too high or low. Thus, Hercules asserts that it intended to discount \$28,832 from its correct worksheet total of \$373,153, to arrive at its intended bid total of \$344,321.

We find the Navy's position to be reasonable. There is nothing in the bid or the worksheets to show how the amount of the discount was calculated. The discount was not expressed in the worksheets or in the bid itself in terms of a percentage or as a specific number and there is no consistent pattern to show that discounts should be applied to individual cost elements in any particular manner. To arrive at the actual amount of the discount, the \$244,321 bid must be subtracted from the erroneous estimate of \$273,153. This results in \$28,832 which is 32.035 percent of the \$90,000 hauling estimate. It is not possible to determine what Hercules' bid would have been had it been aware of the alleged \$100,000 error in its worksheet total. To conclude that the same discount, or a greater or lesser one, would have been applied to the correct cost estimate total of \$373,153 would be speculative at best. In other words, we simply have no way of calculating what discount if any would have been deducted from the \$100,000 error that Hercules made in its bid. See, for example, Western Alaska Contractors, B-220067, Jan. 12, 1986, 86-1 CPD ¶ 66 at 5, wherein we determined that a markup could not properly be added to the corrected bid because the worksheets also did not specify the method used by the bidder to calculate the markup. Thus, without knowing how the amount of \$28,832 was determined, the bid intended by Hercules cannot be determined with certainty and cannot be corrected.

Hercules states that if its request for bid correction is rejected, it does not intend to withdraw its bid but will complete the project at its original bid price. Generally, where there is evidence of a mistake having been made and how it was made but there is no clear and convincing evidence of the exact bid intended, the bid may not be corrected and the error may not be waived; the agency may only permit withdrawal of the bid. LABCO Construction, Inc., B-219437, Aug. 28, 1985, 85-2 CPD ¶ 240; Fortec Constructors, B-203190.2, Sept. 29, 1981, 81-2 CPD ¶ 264. However, acceptance of a low bid is permitted when it would not be prejudicial to the other bidders and if the evidence clearly shows that the intended bid would also be low, even though the intended bid could not be established with the certainty required by the rules applicable to correction of bids. Bruce-Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 CPD ¶ 310; Colbar, Inc.--Reconsideration, B-218228.4, Feb. 13, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 156.

Here, the initial bid submitted by Hercules is low and the bid price of \$344,321 which Hercules alleges it intended to bid (the maximum amount that the worksheets show would have been bid even if no discount is applied) is still \$48,769 below the price of the only other bidder. Thus, award to Hercules at its uncorrected price would not prejudice the other bidder. Award therefore may be made to Hercules at its initial bid price of \$244,321, provided that Hercules' bid is responsive and that Hercules is found to be responsible for award at that price.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel