



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: GSX Government Services, Inc.
File: B-233101
Date: February 9, 1989

DIGEST

1. Protester, the third low bidder, has the direct economic interest necessary to be an interested party entitled to challenge the contracting agency's decision to allow the awardee to correct an apparent mistake in its bid since, if the protest were sustained, agency would be required to determine whether to allow second low bidder to withdraw its bid based on claimed mistake; if withdrawal were permitted, protester would be in line for award.

2. Where correction of mistake results in displacement of a lower bid, contracting agency improperly permitted awardee to correct mistake in its bid, since clear and convincing evidence establishing the bid actually intended could not be determined substantially from the invitation and the bid itself.

DECISION

GSX Government Services, Inc. (GSX), protests the award of a contract to any other firm, under invitation for bids (IFB) No. N62474-88-B-3887, issued by the Department of the Navy for hazardous waste collection and disposal. GSX contends that Erickson, Inc., the apparent low bidder, was improperly permitted by the Navy to make downward corrections in its bid, thereby displacing GSX as the low bidder. We sustain the protest.

The IFB called for bidders to submit unit and extended prices for estimated quantities for hazardous waste collection and disposal. Seventeen bids were received and the apparent low bidder was Rah Environmental with a bid of \$2,169,032.85. However, Rah alleged a mistake in its bid and the Navy, after reviewing the matter, determined that Rah should be permitted to withdraw the bid. The apparent second low bidder was Ecocure, Inc. with a bid of \$2,284,472.35. By letter dated July 1, Ecocure requested

that its bid be corrected based on a unit price mistake under line item 0006B, and that its bid price be increased to \$2,644,472.35. The Navy denied Ecocure's request for correction on the ground that Ecocure had not provided any justification to support the amount of its intended unit price for line item 0006B.

Erickson submitted a bid indicating a total of \$2,253,864, but there was a discrepancy between the unit price and the extended total in item 0007B ("Asbestos Collection, Polybags"); Erickson's stated unit price for item 0007B was \$1,500, and the estimated quantity was 1,500, but the stated extended price was only \$75,000. Because the IFB provided that, in case of a discrepancy between unit prices and the extended totals, the unit prices will prevail, the contracting officer changed Erickson's bid for item 0007B from \$75,000 to \$2,250,000. This raised Erickson's bid to \$4,435,795, which resulted in Erickson's being the eighth low bidder.

By letter dated July 7, 1988, Erickson contended that it inadvertently had inserted the quantity estimate, 1,500, in the unit price column rather than its intended unit price of \$50, and that its total line item price of \$75,000 was correct. Erickson provided its worksheets to the contracting officer in support of its contention that a transpositional error was made and that its intended unit price bid was \$50 per cubic yard for bid item 0007B. The contracting officer determined that there was clear and convincing evidence of a clerical mistake and recommended correction in accordance with Federal Acquisition Regulation (FAR) § 14.406-3(a), which prescribes procedures for correction of clerical mistakes. The Navy thus permitted Erickson to reduce its unit price to \$50 for a total bid price of \$2,260,795. By letter dated October 5, the Navy awarded the contract to Erickson.

GSX contends that the correction should not have been permitted because it is improper to rely on worksheets in this situation and because there was no evidence of the intended price on the face of the bid. We agree.^{1/}

^{1/} The Navy initially contends that, since Ecocure's bid remains viable, GSX would not be in line for award even if its protest were sustained, and therefore should not be considered an interested party. We disagree. The Navy has not yet determined whether to permit Ecocure to withdraw its bid; if Ecocure ultimately is permitted to withdraw, GSX would be next in line for award. Under these circumstances,

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Under FAR § 14.406-3(a), an agency may permit a bidder to correct an alleged mistake where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. Where such a correction, including the correction of a discrepancy between unit and extended prices, would result in displacing one or more lower bids, however, the correction is permissible only if the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. Eagle Electric, B-228500, Feb. 5, 1988, 88-1 CPD ¶ 116; G.S. Hulsey Crushing, Inc., B-197785, Mar. 25, 1980, 80-1 CPD ¶ 222; see also Armstrong & Armstrong v. United States, 356 F. Supp. 514 (E.D. Wash. 1973), aff'd, 514 F.2d 402 (9th Cir. 1975).

The Navy contends that the allegedly intended \$50 unit price can be determined from GSX's bid itself by dividing the extended price total (\$75,000) by the estimated quantity (1,500). This argument ignores entirely the relevant facts set forth above, and the impact of the relevant IFB language. To reiterate briefly, the extended price of Erickson's item 0007B was inconsistent with the \$1,500 unit price, and the IFB specified that the unit price would be controlling; this was what necessitated increasing Erickson's bid in the first place. The Navy's argument would essentially reverse the operation of the IFB language by accepting the extended price, rather than the unit price, as correct, and then calculating the intended unit price by dividing the \$75,000 total by the 1,500 quantity. This is not probative evidence of an intended bid; rather it is an assumption which appears to have resulted from Erickson's explanation and worksheets. The only real "evidence" relied upon by the Navy (other than the worksheets, which cannot be the basis for a correction that displaces other bidders, see Russell Drilling Co., 64 Comp. Gen. 698 (1985), 85-2 CPD ¶ 87), was "the contracting officer's view that Erickson inadvertently copied the estimated quantity in the unit price column." We see no evidence on the face of the bid that this was the case. A contracting officer's experience may play some part in the determination whether correction is warranted, but such intangible factors cannot eliminate entirely the need for some indication of the intended price in the bid itself. Id.

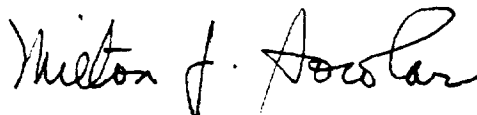
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GSX has a direct economic interest in the award and thus is an interested party. See Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1988).

Further, while the Navy states that the \$50 unit price is "more in the range" of the other bids, we note that the unit prices submitted by the other bidders for item 0007B were: \$11.85, \$58.42, \$70.00 (GSX), \$70.78, \$75.00, \$88.00, \$100.00, \$107.47, \$131.00, \$136.00, \$257.50, \$261.45, \$266.31, \$400.00, and \$1,900. Given this wide array of unit prices, we find no reason to conclude that Erickson more likely intended a \$50 unit price than a \$1,500 unit price. Indeed, we see nothing in the bid suggesting that any mistake was not entirely random, rather than the result of misplacing numbers. In any case, the mere likelihood that a certain bid might have been intended does not, in our view, satisfy the requirement under the standard applicable here that the intended bid be clear from the invitation and the bid itself.

Accordingly, by separate letter to the Secretary, we are recommending that Erickson's contract be terminated for the convenience of the government and that the agency make a determination in accordance with FAR § 14.406 as to whether Ecocure should be permitted to withdraw its bid. We further recommend that if the agency permits Ecocure to withdraw, an award be made to GSX as the next low bidder if the firm is otherwise eligible. In any case we find GSX entitled to recover its protest costs.

The protest is sustained.


for Comptroller General
of the United States