

Lebowitz



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Reliable Sanitation
File: B-235863
Date: October 13, 1989

DIGEST

Agency determination denying a bidder's preaward request to correct an alleged mistake in its apparent low bid was not unreasonable where the bid contains a significant number of the same transposition errors from the bid worksheet, and the bidder did not present clear and convincing evidence of its intended bid.

DECISION

Reliable Sanitation protests the Department of the Army's denial of its preaward request to correct a mistake in its low bid submitted in response to invitation for bids (IFB) No. DAKFO6-89-B-0028, issued by the Army for the collection, transportation, and disposal of all refuse and garbage at Fort Carson, Colorado. Reliable specifically requests correction of its bid under the applicable standards for mistakes disclosed before award.

We deny the protest.

The IFB requested bids for a base contract period of 1 year (items Nos. 0001-0010), and for 2 option years (items Nos. 0011-0020 for option year 1 and items Nos. 0021-0030 for option year 2). For each item, bidders generally were to indicate the unit price per month, the extended price for each line item, and the total price for all line items for each year. Items Nos. 0003, 0013, and 0023 are at issue. They required service for a quantity of 55 each 32-gallon garbage containers located at the Fort. At bid opening, Reliable, the incumbent contractor, submitted the apparent total low bid of \$875,907, bidding \$200 per month for a total of \$2400 per year for each of these items. The other bids submitted ranged from a total of \$987,068 to \$1,662,859, with prices from \$173.25 to \$2,364 per month for a total ranging from \$2,079 to \$28,368 per year for each of

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the specific items. After bid opening, Reliable alleged that it had made a mistake in its bid when transposing prices from its worksheet to its bid; Reliable requested an opportunity to correct the mistake. Reliable argued, based on its worksheets, that it intended to bid \$2,000 per month instead of \$200 per month for a total of \$24,000 per year instead of \$2,400 per year for each of the respective items. Reliable also submitted as evidence of its intended bid its previous contract in which it bid \$2,607 per month for a total of \$31,284 per year for the identical items. After reviewing the evidence submitted by Reliable, the agency concluded that while this evidence reasonably supported Reliable's position that it had made a mistake in its bid, the evidence did not support correction of the bid. Therefore, the agency denied Reliable's request to correct its bid. This protest followed.

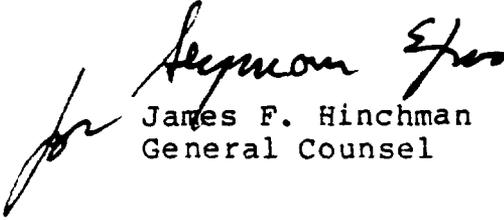
A bidder who seeks correction of an error in his bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended bid price. Federal Acquisition Regulation (FAR) § 14.406-3(a) (FAC 84-44). Whether the evidence furnished meets the clear and convincing standard is a question of fact, and we will not question an agency's determination based on this evidence unless it is unreasonable. Americorp, B-232688, Nov. 23, 1988, 88-2 CPD ¶ 515.

Here, the agency points out that Reliable's unit price of \$200 and its total price of \$2,400 for each item were in the range of prices offered by the other bidders. Specifically, the other unit prices ranged from \$173.25 to \$2,364 per month and the total prices ranged from \$2,079 to \$28,368 per year. Thus, the Army found that a comparison of Reliable's bid with other bids failed to indicate a mistake in Reliable's bid. In addition, Reliable made the identical 2 transposition mistakes, 3 times each (base year and 2 option years). The agency concluded that because Reliable was admittedly working from its previous contract, it was unlikely that it would have mistakenly inserted prices in its bid in six different places if these were not the prices it actually intended. Also, the agency noted that the protester calculated its price based on its prior contract, but for unexplained reasons submitted a price lower than the total price from its prior contract which was contained in its worksheet. Thus, it appeared to the Army that, given the significant number of alleged transposition errors and its method of calculation, the protester could not convincingly establish these were in fact merely transposition errors, rather than the intended bid.

Reliable has not rebutted or explained why it repeatedly failed to copy the "correct" numbers from its bid worksheet.

We think the agency's determination that Reliable's evidence of its intended bid was less than clear and convincing was reasonable. First, Reliable's alleged erroneous prices are within the range of prices bid and thus the prices bid do not convincingly indicate the possibility of a mistake. Second, Reliable allegedly made the identical 2 transposition mistakes, 3 times each, and we agree it is unlikely that Reliable, the incumbent contractor, admittedly working from its prior contract, would have inserted incorrect prices in its bid in six different places if the prices initially bid were not the intended prices. Third, we note that Reliable has not explained why it submitted a total price lower than the total from its prior contract which was contained on its worksheet. Under these circumstances, we agree with the Army that Reliable cannot correct its bid. D. L. Draper Associates, B-213177, Dec. 9, 1983, 83-2 CPD ¶ 662; DeRalco, Inc., B-228721, Oct. 7, 1987, 87-2 CPD ¶ 343.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel