



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W. H. Hussey & Associates, Inc.--Request for Reconsideration

File: B-237207.2

Date: May 2, 1990

Benjamin A. Hubbard, Esq., Outland, Gray, O'Keefe, & Hubbard, for the protester.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration based on a protest allegation not considered in prior decision is denied where the allegation was untimely because the protester knew or should have known of this basis of protest no later than the time it filed its original protest, but failed to raise the matter until it filed its comments to the agency report, more than 10 working days after the date the basis of protest was known or should have been known.

DECISION

W. H. Hussey & Associates, Inc., requests that we reconsider our decision in W. H. Hussey & Assocs., Inc., B-237207, Feb. 1, 1990, 90-1 CPD ¶ 137, in which we denied Hussey's protest that the Department of the Navy improperly permitted Virtexco Corporation to make an upward correction of its apparent low bid submitted in response to invitation for bids (IFB) No. N62470-89-B-3783 (IFB-3783), issued by the Navy for repairs and alterations to the Commissioned Officer's Mess at the Naval Amphibious Base in Little Creek, Virginia Beach, Virginia.

We deny the request for reconsideration.

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 were opened for IFB No. N62470-89-B-3767 (IFB-3767), issued

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by the Navy for the relocation of the mechanical room at the same installation, 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, and it 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.

Hussey protested 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. We held that the agency reasonably determined that Virtexco's evidence of its mistake and intended bid price was clear and convincing, and that our Office had no basis to question this determination.

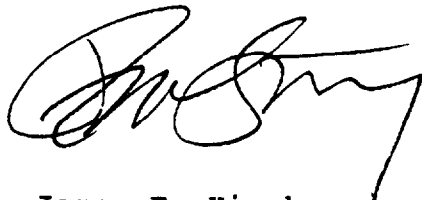
On reconsideration, Hussey alleges that while we addressed three major issues it raised concerning Virtexco's mistake in its apparent low bid and the agency's decision to allow it to correct its mistake,^{1/} we failed to respond specifically to a fourth issue which Hussey raised for the first time in its comments filed in response to the agency report. Hussey had alleged that Virtexco's uncorrected bid for IFB-3783 should have been rejected (prior to the agency's even deciding to allow Virtexco to correct its mistake) because Virtexco failed to initial a correction made to its base bid figure as it appeared on Standard Form (SF) 1442. Prior to bid opening, Virtexco crossed out the original figure of \$160,381, labeled as the base bid, and below this wrote a second figure, still labeled as the base bid, of \$143,824. In our prior decision, we did not address this issue specifically since we found the agency's upward correction proper regardless of Virtexco's base bid figures, both of which were low.

^{1/} We point out that Hussey does not challenge our denial of these protest issues.

Our Bid Protest Regulations require that protests must be filed within 10 working days of the date the basis of protest was known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Here, the record reveals that Hussey knew or should have known of this basis of protest no later than October 2, 1989, when it filed its protest, as it had possession of Virtexco's bid documents and even attached copies of these documents to its protest letter. However, Hussey did not raise this issue until November 22, when it filed its comments to the agency report. It acknowledges that "[its] fourth ground of protest [was first stated] at page 7 of [its] original written comments." Clearly, Hussey did not timely raise this basis of protest. See Theater Aviation Maintenance Serv., B-233539, Mar. 22, 1989, 89-1 CPD ¶ 294.

An untimely protest allegation provides no basis for requesting reconsideration. See Clean Giant, Inc.--Request for Recon., B-229885.2, Apr. 18, 1988, 88-1 CPD ¶ 376.

Accordingly, the request for reconsideration is denied.



 James F. Hinchman
General Counsel