

Ruppert



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ibex, Ltd.

File: B-240770

Date: December 12, 1990

Lyle Goodwin for the protester.
Michael J. Lederman, Esq., Haas & Najarian, for the Westec Company, an interested party.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
George M. Ruppert, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly refused to allow modification that would have made protester's bid low where modification initially conveyed before bid opening by telephone would not have made bid low and confirming telegram containing different modification that would make bid low was not received until after bid opening; a pre-opening telephonic bid modification may be considered if subsequently confirmed by telegram, but there is no basis for accepting modification conveyed in the confirming telegram where that modification is different from the telephonic modification received before bid opening.

DECISION

Ibex, Ltd. protests the Navy's rejection of its bid modification that would have made it the low bidder under invitation for bids (IFB) No. N62474-87-B-7768, for renovation of family housing units at the Whidbey Island Naval Air Station in Oak Harbor, Washington.

We deny the protest.

Bid opening was scheduled for 2 p.m., on July 5, 1990, in Silverdale, Washington. Prior to bid opening, at 12:25 p.m., the agency's contracting specialist received a telephone call from Western Union advising of a reduction in Ibex's bid by \$2,817 for base bid item 0001 and \$840,000 for additive bid item 0001AA. During the telephone conversation, the Western Union operator initially indicated that the amount of one modification for item 0001 was unclear. Subsequently, during the same conversation, she stated that "it must be \$2,817.00"

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and read the remainder of the telegram message: ". . . \$2,817 from item 0001 and \$840,000 from item 0001AA. Written confirmation will follow." This modification did not make Ibex the low bidder.

At 4 p.m., 2 hours after bid opening, the contracting officer received a telephone call from a representative of Ibex informing the agency that the telephonic bid modification conveyed by Western Union had been in error. Ibex stated that base bid item 0001 should have been reduced by \$2,817,000, not \$2,817 as indicated by Western Union. The next morning, at 7:25 a.m., Western Union telephoned the contracting officer and informed her that it had made a mistake in the telephone message regarding Ibex's bid modification, and that the deduction to base bid item 0001 should have been \$2,817,000. Later that day, at 12:49 p.m., the contracting officer received the confirmation copy of the Western Union telegram, dated before bid opening on the previous day; this showed an intended reduction for bid items 0001 and 0001AA in the amounts of \$2,817,000 and \$840,000, respectively. The contracting officer informed Ibex that its telegraphic bid modification could not be considered because it was received after bid opening. Since Ibex's price without the modification was \$5,000,000, which was \$3,510,159 higher than the low bid of \$1,489,841 submitted by the Westec Company, the Navy made award to Westec.

Ibex argues that the contracting officer improperly rejected its telephonic bid modification made prior to bid opening and confirmed by telegram thereafter. Ibex contends that it is clear from the confirming Western Union hardcopy that it intended a modification to base bid item 0001 in the amount of \$2,817,000, not \$2,817 as recorded on the bid abstract.

The applicable regulation, Federal Acquisition Regulation (FAR) § 14.303(a) (1990), permits acceptance of telegraphic bid modifications received in the office designated in the IFB not later than the exact time set for opening of bids. The regulation also provides that, unless proscribed by agency regulations, a telegraphic modification of a bid received in the designated office by telephone before bid opening shall be considered, but only where the message is confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call.^{1/}

^{1/} The Navy argues that telephonic modifications were not permitted here since the IFB, while allowing telegraphic modifications, did not specify that telephonic modifications were allowed. Under FAR § 14.303(a), however, telephonic modifications (with telegraphic confirmations) are permitted

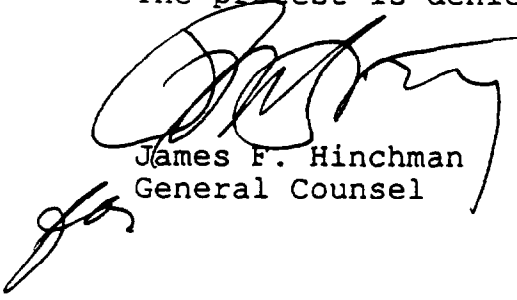
(continued...)

We find that Ibex's attempted modification was ineffective. The firm's attempted modification did not satisfy the requirements of FAR § 14.303(a) since the copy of the telegram sent to the Navy after bid opening did not confirm the pre-bid opening telephone message from Western Union. The only reasonable interpretation of the requirement in FAR § 14.303(a) that telephonically relayed telegraphic bid modifications be "confirmed" is that the subsequent telegram must contain the same figures as those relayed by telephone. This interpretation is consistent with FAR § 14.302(b)(6), which provides for consideration of telephonically relayed telegraphic bids only if the bid in the telegram (which may be received up to 5 days after bid opening) is identical in all essential respects to the bid received in the pre-bid opening telephone call from the telegraph office.

While FAR § 14.303(a) obviously deprives bidders of the opportunity to demonstrate which figures they intended where, as here, an inconsistency arises, there is nothing objectionable in imposing on bidders who choose to relay modifications telephonically the risk of their agent's (here, Western Union's) failure to make a timely and complete transmission of the modification. See generally Singleton Contracting Corp., B-232760, Dec. 14, 1988, 88-2 CPD ¶ 592. Any other conclusion would undermine the maintenance of confidence in the integrity of the government procurement system, which is of greater importance than the possible monetary advantage to be gained by considering an ineffective modification in a particular procurement. See Hargins Constr., Inc., B-221979, May 6, 1986, 86-1 CPD ¶ 438.

We conclude that no effective timely modification of Ibex's bid was received, and that the Navy therefore properly made award to Westec as the low bidder.

The protest is denied.



James F. Hinchman
General Counsel

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as a form of telegraphic modification unless agency regulations provide otherwise; the Navy has not cited, and we are not aware of, any regulation prohibiting telephonic modifications as provided in FAR § 14.303(a).