

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-183580

DATE: September 24, 1975

MATTER OF: Natkin and Company

DIGEST:

Under invitation for bids providing that binding contract will result when written award is "mailed or otherwise furnished" to successful bidder, bidder is not entitled to correction of mistake in bid alleged after mailing of notice of award but prior to receipt of notice, award having become effective on deposit of award notice in mail, since correction of mistake in bid alleged after award is not permitted where prior to award contracting officer was not on actual or constructive notice of alleged mistake.

Natkin and Company requests relief from an alleged mistake in bid asserted in regard to award of contract No. GS-09B-C-7505-SF by the General Services Administration (GSA). Natkin claims that in computing the amount of its bid its estimator inadvertently used the wrong figures off its work sheets for estimated labor and material costs resulting in an under bid in the amount of \$265,512.00. Consequently, its bid was low at \$2,230,000.00. The next low bid was \$2,346,461.00 and the highest of five bids was \$2,475,154.00. The Government estimate was \$2,440,000.00.

Although Natkin may have made an error in computing its bid price, it is clear that the mistake was unilateral and the bidder is bound by the contract awarded unless the contracting officer knew or should have known of the mistake at the time of the award. Only if the contracting officer had either actual or constructive notice of the possibility of mistake may the contract be reformed or rescinded. King Brothers, B-183717, June 2, 1975; 49 Comp. Gen. 272 (1969).

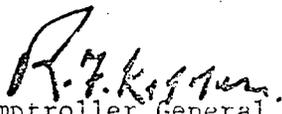
The "Acceptance of Bid" was signed by the contracting officer on March 20, 1975, at 11:30 a.m. and mailed by 2:00 p.m. on that date. Standard Form 21, contained in the invitation for bids (IFB), specifies that the written acceptance of the bid is effective when it is "mailed or otherwise furnished" and it is our view that where such language is included in an IFB and the bidder takes no exception

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thereto, a binding contract comes into existence upon the mailing of the notice of award. 45 Comp. Gen. 700, 708 (1966). It was later that day that Natkin orally informed GSA that it had made an apparent mistake in bid. A letter confirming this was forwarded on March 21. It is thus clear that the contracting officer was not informed of the error until after acceptance of Natkin's bid. See B-161190, July 5, 1967.

Absent actual knowledge by the contracting officer prior to award, it must be determined whether the contracting officer was on constructive notice of the alleged error due to any discrepancies between the Natkin bid and those submitted by the other bidders. Since, as noted above, Natkin's bid was only 5 percent below the next low bid, 9 percent below the Government estimate and was within close proximity of all the other bids, we conclude that the contracting officer was not on constructive notice of the alleged mistake. King Brothers, supra.

Accordingly, there is no legal basis for relief from the alleged mistake.


Deputy Comptroller General
of the United States