

DECISION



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

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FILE: B-184580

DATE: September 12, 1975

MATTER OF: Greg Houda

DIGEST:

Contract awarded to low bidder is valid and binding notwithstanding claim of mistake in bid, since contracting officer was not on constructive notice of error where bid price, even though well below Government estimate, formed part of reasonable upward progression and was consistent with industry trends and with other bids on similar items.

The Forest Service, United States Department of Agriculture, has referred to us for decision the claim of Mr. Greg Houda that he made a mistake in his bid submitted in response to solicitation No. 03-75-31, which requested bids on three separate items of work involving tree thinning on the Harney Range District of the Black Hills National Forest.

The three items were identified as Marshall III, 59 acres; Woodchuck no. 1, 40 acres; and Woodchuck no. 2, 62 acres. The District cost estimates were \$49.55 per acre for item no. 1 and \$59.46 per acre for items no. 2 and 3. Mr. Houda submitted bids on all three and was low bidder on item no. 1 at \$32.99 per acre. After award of a contract for item no. 1 to Mr. Houda, he contended that he made a mistake in his bid in that he transposed his bids on items no. 1 and 3, intending to bid \$52.90 on item no. 1 and \$32.99 on item no. 3. He now seeks to withdraw from the contract because it is economically unfeasible. The contracting officer agrees that in all probability Mr. Houda did transpose the figures, but asserts that since he had no actual or constructive notice of the error a valid enforceable contract exists.

The responsibility for the preparation of a bid rests with the bidder. Roger C. Mortenson, B-179956, February 21, 1974 and A.C. Ball Company, B-178402, April 18, 1974. Relief from a contract resulting from a bidder's unilateral mistake in submitting a bid will not be granted unless the contracting officer knew,

or had reason to know, of the mistake prior to acceptance of the bid and failed to seek verification of the bid. United States v. Metro Novelty Mfg. Co. Inc., 125 F. Supp. 713 (1954); 44 Comp. Gen. 383 (1965); Roger C. Mortenson, supra. In determining whether a contracting officer has a duty to verify bid prices:

"* * * the test is whether under the facts and circumstances of 'the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer' (Welch, Mistakes in Bid, 18 Fed. B.J. 75, 83) without making it necessary for the contracting officer to assume the burden of examining every bid for possible error by the bidder * * *." 49 Comp. Gen. 272, 274 (1969), quoting B-164845, January 27, 1969.

Under this test, we have held that a contracting officer is charged with constructive knowledge of a mistake when a bid price significantly deviates from other bids received or from the Government estimate. See, e.g., 49 Comp. Gen. 446 (1970); 48 id. 672 (1969); and Roger C. Mortenson, supra. On the other hand, we have held that a contracting officer cannot be charged with constructive knowledge of a mistake in circumstances where a bid, even though well below the Government estimate, is part of a reasonable progression of bids. 39 Comp. Gen. 405 (1959); A.C. Ball Company, supra.

In the instant case, Mr. Houda's bid on item no. 1 was 34 percent below the Government's estimate.

However, there were eight bids on item no. 1 below the Government estimate. Mr. Houda's low bid of \$32.99 does not appear to be out of line with the rest of those bids (\$37.50, \$40 [3 bids], \$44, \$45, \$49), which clearly form a reasonable upward progression. Moreover, the fact that Mr. Houda may have transposed his intended bid prices for items no. 1 and 3 could not be regarded as reasonably evident from the bid itself, since a higher bid price for item no. 3 than for item no. 1 was consistent with both the Government estimate and two other bids received. In addition, the contracting officer points out that there was a trend toward lower prices this season and that the low bids on items no. 2 and 3 were also well below the estimates and followed similar progressions. Under these circumstances we do not believe that the contracting officer can

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be charged with constructive notice of possible error on the part of Mr. Houda's bid. Accordingly, we hold that the award to Mr. Houda culminated in a valid and binding contract.



Acting Comptroller General
of the United States