

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

FILE: B-185039

DATE: November 17, 1975

MATTER OF: P &amp; N Palm Co., Inc

**DIGEST:**

Where contract awarded subject to mistake in bid alleged prior to award, and contractor's evidence leaves no substantial doubt as to existence, nature, and amount of mistake (including markup not claimed until after award) contract may be reformed to reflect error and upward price adjustment is not limited to amount of error claimed prior to award.

The Department of the Interior has forwarded for consideration and decision by this Office a request for reformation of contract No. CX-9000-5-9007 (or contract No. CX-9000-6-9003) awarded by the National Park Service, Denver Service Center, to the P & N Palm Co., Inc. (Palm), on August 11, 1975.

Invitation for bids (IFB) Project No. 9340-1772 was issued on May 15, 1975, for construction of sewerage system modifications at the Ocean Caves National Monument in Josephine County, Oregon. The IFB contained a blank for the insertion of a lump sum bid for the sewerage system modifications. A contingent sum of \$1,000 for a force account was to be added to the lump sum to establish a total bid price. Bids were opened on June 12, 1975, and Palm was the lowest bidder at \$21,803. The next lowest bid received was \$37,890.

Palm's bid contained a lump sum figure of \$19,803 to which a contingent fee of \$1,000 was to be added to obtain the total bid price. However, Palm inserted \$21,803 as its total bid price. Thus, either the total bid price of \$21,803 was incorrect or the lump sum figure of \$19,803 was incorrectly stated.

By letter dated June 17, 1975, the contracting officer requested verification of Palm's bid price. In a letter dated July 2, Palm stated that it had made a mistake in the lump sum figure due to its neglect to "transfer a \$1,000 figure meant for subcontractual work." Palm proceeded to indicate that the total bid price of \$21,803 was thus correct. The contracting officer stated that he could correct the apparent error only if it was a mistake in the addition of the lump sum and contingent sum figures, and that a claim of mistake in

the preparation of the bid would require the support of clear and convincing evidence as to the existence of a mistake as well as the amount of the bid actually intended. Palm then submitted its bid worksheet, a statement from a subcontractor with respect to a quote, and an explanation as to how the mistake occurred.

The contracting officer requested that Palm grant an extension to its bid acceptance period from August 11, 1975, to October 13, 1975, in order to allow sufficient time for the processing of the mistake in bid claim. Palm granted an extension contingent upon acceptance of its bid of \$21,803 and stated that under such an extension, it would not guarantee a completion date of sixty days as required by the invitation. On August 7, 1975, the contracting officer awarded the contract to Palm in the amount of \$20,803, with a provision that the contract "is subject to any modification change, or adjustment which the Comptroller General of the United States might make as a result of the allegation of error contained in [Palm's letter of July 2, 1975]." The July 2 letter alleged that Palm had made a mistake in the amount of \$1,000 in its computation of the lump sum figure but that the total bid price figure of \$21,803 was correct. Subsequently, however, Palm stated that it wished to claim 25 percent overhead and profit markup, and 10 percent "risk," markup associated with the \$1,000 error, as shown on its worksheet, and that the amount of the mistake thus totaled \$1,375.

The general rule applicable to such circumstances is that acceptance of a bid by the Government with actual or constructive knowledge of an error in the bid does not create a binding contract. 52 Comp. Gen. 837 (1973); 45 Comp. Gen. 700 (1966). In the instant case, the contracting officer was aware of the claim of mistake prior to award. At that time, Palm could have had its claim of mistake processed in accordance with the procedures set forth in Federal Procurement Regulation 1-2.406 et seq. However, due to exigencies requiring prompt completion of the contract, the award was made to Palm with the specific reservation of the right to have the mistake claim reviewed by our Office and the contract price adjusted accordingly.

We do not believe that the price adjustment should be limited to Palm's original claim of \$1,000. While the contract incorporates by reference Palm's letter of July 2, 1975, which states that the amount of the mistake was \$1,000, the contract provides that the contract price is subject to any adjustment which this Office might

make as a result of the allegation of error contained in the above referenced letter. It would be an unduly strict construction to interpret the contract as limiting adjustment of the contract price to an amount not to exceed the \$1,000 originally claimed. Thus, no valid basis exists for the position that by entering into the contract, Palm waived or accepted limitations of its right to have the price adjusted to reflect its intended bid.

The evidence indicates that the quotation for the price of lumber included in Palm's worksheet was intended to be increased by \$1,000. An examination of the worksheet reveals that the lumber quotation was subject to a 25 percent markup for overhead and profit and the resulting figure was in turn subject to a 10 percent markup for "risk". Therefore, we find that the evidence submitted by Palm in support of its claim leaves no substantial doubt as to either the nature of the mistake or the actual bid intended.

Accordingly, the contract may be reformed to reflect an upward price adjustment in the amount of \$1,375.

  
Deputy Comptroller General  
of the United States