

DECISION

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

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98334

FILE: B-186625

DATE: July 7, 1976

MATTER OF: Schurr & Finlay, Inc.

DIGEST:

Correction of contract price based on mistake in bid alleged after award is not permitted where difference between low bid, next low bid and Government estimate was not such as to have placed contracting officer on constructive notice of possibility of mistake in bid.

The Department of the Army (Army) has forwarded for our decision the request of Schurr & Finlay, Inc. for correction of contract No. DACA09-74-C-0051 on the basis of an error of \$23,984.59 in bid alleged after award.

The contract resulted from an invitation for bids (IFB) issued by the Army and opened on April 26, 1974. The IFB called for expansion of the electrical distribution system at Yuma Proving Grounds, Arizona. Eight bids were opened with the three lowest bids and the Government Estimate as follows:

	<u>Base Bid</u>
Schurr & Finlay, Inc.	\$1,618,822.00
Interstate Electric Co.	\$1,741,448.00
Sherwin Electric Service	\$1,818,373.00
Government Estimate	\$1,490,000.00

Award was made to Schurr & Finlay on May 17, 1974.

On October 24, 1975, and again on March 19, 1976, a representative of Schurr & Finlay discussed an alleged mistake in bid with Army personnel. Thereafter, by letter dated March 22, 1976, Schurr & Finlay requested correction of a \$23,984.59 mistake in bid and submitted worksheets and additional information as proof thereof.

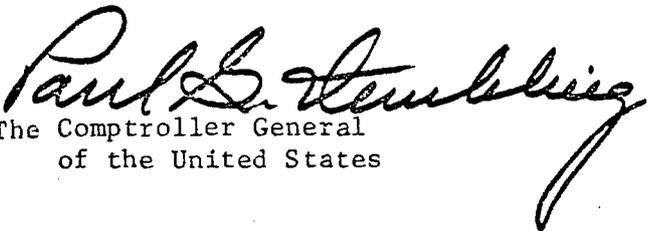
While it may be that Schurr & Finlay made errors in computing its bid price, the general rule with regard to mistakes alleged after award of a contract is that the bidder must bear the consequences of its unilateral mistake unless the contracting officer

knew or should have known of the mistake at the time the bid was accepted. Titan Environmental Construction Systems, Inc., B-180329, October 1, 1974, 74-2 CPD 187. In Roger Mortensen, B-179956, February 21, 1974, 74-1 CPD 88, we stated that:

"It is well established that responsibility for the preparation of a bid rests with the bidder and that relief from a contract will not be granted for a unilateral mistake in submitting a bid unless the contracting officer knew or had reason to know of the mistake prior to acceptance of the bid. Chernick v. United States, 178 Ct. Cl. 498 (1967); 44 Comp. Gen. 383 (1965); B-176517, September 6, 1972; B-174899, May 31, 1972. A contracting officer will generally be charged with constructive knowledge of a mistake when the bid price significantly deviates from other bids received or from the Government estimate, see 50 Comp. Gen. 39 (1970); Doke, Mistakes In Government Contracts--Error Detection Duty of Contracting Officers, 18 S.W.L.J. 1, 16-28 (1964); B-176517, September 6, 1971.

"The test is one of reasonableness; whether under the facts and circumstances of the particular case there were any factors which reasonably could have raised the presumption of error in the mind of the contracting officer. Wender Presses, Inc. v. The United States, 170 Ct. Cl. 483, 486 (1965); B-176772, May 23, 1973."

In the instant case the second and third low bids were only 7.5 and 12.3 percent higher, respectively, then the base bid of Schurr & Finlay. We believe these differences were not so great as to have placed the contracting officer on constructive notice of the possibility of error. King Brothers, Inc., B-183717, June 2, 1975, 75-1 CPD 332. Moreover, the Government Estimate for the base item was lower than Schurr & Finlay's low bid for the item. Therefore, acceptance of the Schurr & Finlay bid constituted a valid and binding contract from which relief may not be granted.


For The Comptroller General
of the United States