

DECISION



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

60655

FILE: B-185032

DATE: March 18, 1976

98470

MATTER OF: Robert McMullan and Son, Inc.

DIGEST:

Claim for amount inadvertently omitted from bid price due to bidder's misinterpretation of supplier's quotation is denied where notice of mistake and bid withdrawal was not received at office designated for receipt of withdrawals until after award and the disparity in bid prices was insufficient to place the contracting officer on notice of possible mistake before award.

The Department of the Navy, Naval Facilities Engineering Command, has requested a decision as to whether it may correct the price of contract No. N62467-73-C-0073, awarded to Robert McMullan and Son, Inc., in the amount of \$1,019,008 for the construction of a Marine Barracks with Mess Modernization and Addition, Naval Station, Charleston, South Carolina.

The bids, opened on June 5, 1975, were as follows:

	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Total</u>
Robert McMullan and Son	\$648,122	\$289,036	\$ 81,850	\$1,019,008
Palmetto Construction	694,118	297,830	84,705	1,076,653
Dawson Engineering	708,058	327,846	97,173	1,133,077
Ruscon Construction Company	681,315	372,837	101,580	1,155,732
Government's Estimate	695,000	290,000	115,000	1,100,000

McMullan states that it calculated its bid on Item 1 on the basis of its subcontractor's oral quotation. McMullan believed the quotation covered labor and materials to install structural steel and miscellaneous iron work. However, by letter dated June 13, 1975, the subcontractor confirmed that its oral quote excluded the hardware to be installed. McMullan alleges that its bid was prepared on the basis of the erroneous oral quotation of \$36,687.00 and that the supplier subsequently has agreed to do the work for \$96,100.00. McMullan, therefore, contends it has under-bid Item 1 by an amount of \$59,413.

McMullan alleged a mistake and requested withdrawal of its bid in a TWX message addressed to the place designated in the solicitation for receipt of withdrawals, i.e., the Naval Facilities Engineering Command. Although McMullan's telegraphic message was first received at a nearby Navy Communications Center on the day of the award at 2:08 p.m., it was not received by the Engineering Command until 8:08 a.m. on the day following the award. In a subsequent letter McMullan reiterated its mistake, but because of progress on the work, requested, in lieu of bid withdrawal, an upward price adjustment not to exceed the difference between Palmetto's bid and its bid.

It is well settled that a written revocation of an offer must be received to be effective. It must come into the possession of the person addressed, or a delegatee, or be deposited in some place authorized by the offeree for such communications. Restatement of Contracts, Sections 41 and 69. In this case McMullan believes it alleged a mistake and revoked its offer prior to award. However, it has provided no basis for questioning the Navy's representation that the award document was mailed prior to receipt by the Engineering Command of McMullan's alleged mistake and withdrawal. Since Government contracts are effective upon the mailing of award, 45 Comp. Gen. 700 (1966), we must conclude that in the circumstances the contracting officer did not have actual notice of the alleged mistake and revocation of the bid at the time this contract was awarded.

Generally, a party to a contract must bear the consequences of its mistake once the offer is accepted, unless the contracting officer may be charged with notice of the probability of error. In such cases our Office or the courts may allow appropriate relief. 48 Comp. Gen. 672 (1969).

McMullan also argues that because its bid was approximately 8 percent lower than the Government estimate, the Navy should have verified McMullan's bid before making award. We note, however, that there was approximately a 12 percent difference between the lowest and highest bids, only a 5 percent difference between McMullan's and the next lowest bid for all items, and only a 5 percent difference between McMullan's and the next lowest bid (Ruscon Construction) for Item 1. The test for implied notice of mistake is one of reasonableness, i.e., 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. Wender Presses, Inc. v. United States, 170 Ct. Cl. 483 (1965); 53 Comp. Gen. 30

B-185032

(1973). Under the facts and circumstances of this case, we believe that the disparity in bid prices was not sufficient to put the contracting officer on notice of a possible mistake in bid. Eagle Acoustic and Tile, Inc., B-182295, March 4, 1975, 75-1 CPD ¶ 127.

In view of the fact that the contracting officer had no notice, express or implied, of McMullan's unilateral mistake in bid on the date of award, we must conclude that McMullan is bound to perform at the contract price. Natkin and Company, B-183580, September 24, 1975, 75-2 CPD ¶ 178.

Accordingly, the contractor's request for upward correction of its contract price is denied.

  
Deputy Comptroller General  
of the United States