

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

60597

FILE: B-185140

DATE: March 2, 1976

MATTER OF: Sunset Construction Company

98526

**DIGEST:**

1. Request for rescission of contract due to mistake in bid alleged after award is granted since contracting officer suspected error and requested verification of low bid but failed to adequately discharge verification duty in accordance with FPR § 1-2.406-3(d)(1) by advising low bidder of next low bid, and of noticeable variance between low bids received and Government estimate.
2. Where contracting officer reasonably determines that evidence submitted in support of request for correction of bid is not sufficient under regulation to permit correction, GAO has no basis for disagreeing with such determination.

The Veterans Administration (VA) has requested a decision as to whether an alleged mistake in bid by the Sunset Construction Company (Sunset) may be corrected after contract award. This matter was submitted pursuant to Federal Procurement Regulations (FPR) § 1-2.406-4(j) (1964 ed. circ. 1), which provides for consideration by this Office of doubtful cases involving possible correction of a mistake in bid price.

Invitation for bids (IFB) 600-91-75 was issued as a small business set-aside for construction work involving modification of the cage wash area in building 87 at the VA Hospital, Long Beach, California. The Government estimate for this work was \$20,517.00. At bid opening on June 19, 1975, the R. A. Stillman Construction Co. (Stillman) submitted the low bid of \$5,219.00. The six remaining bids received were: \$6,541.00, \$9,577.00, \$9,950.00, \$14,300.00, \$16,800.00 and \$18,400.00. In view of the Government estimate of \$20,000.00 and the disparity in the bids received, the contracting officer suspected the possibility of error and requested that Stillman verify its low bid. Stillman's subsequent allegation of a mistake in the amount of \$1,900.00 resulted in VA allowing withdrawal of its low bid.

Sunset had been notified of the basis for the suspected error in Stillman's bid, and was also asked to verify its second low bid. In this regard, a partner of the Sunset Company (who submitted the bid and bid bond for the company under his name) was requested to review the "bid in great detail, revisiting the site if necessary." The contracting officer reports that the partner stated he had contacted Stillman and discussed the mistake which that company had made in its low bid. Afterwards the partner confirmed that the second low bid of \$6,541.00 submitted by Sunset was correct. The verified price was \$1,322.00 more than Stillman's erroneous low bid. On June 27, 1975, award was made to Sunset.

On July 7, 1975, a second Sunset partner orally advised the contracting officer that he had been out of town at the time of award and upon his return had discovered a substantial mistake in bid when rechecking the figures. In a letter dated the same day, Sunset requested release from the contract or a price increase of \$3,750.00 to cover the amount of the alleged error.

Evidence in support of Sunset's claim of error was forwarded by letter dated July 21, 1975. Sunset alleged that the error occurred when:

"Our secretary seemed to have misread a couple of figures, specifically she omitted a zero adding \$250.00 instead of the correct \$2,500.00. In another place she added \$250.00 instead of \$750.00. This led to an error in calculating our profit. We routinely add two times 10% of the sub total for this purpose. She also forgot to add \$450.00 for overhead and prorated cost of superintendent, which is also normally added."

There was a 2-week delay between Sunset's initial claim of a mistake and the mailing of the July 21, 1975, documentation of how the error was allegedly made. The contracting officer noted that the original worksheet containing a breakdown of costs for all phases of the bid included several figures that were not clear and which appeared to have been erased and rewritten. After consideration of the evidence in support of the alleged error in bid, the contracting officer determined that Sunset should be held to its original bid.

The general rule applicable to a mistake in bid alleged after award is that the sole responsibility for preparation of a bid rests with the bidder, and where a bidder makes a mistake in bid it must

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bear the consequences of its mistakes unless the contracting officer was on actual or constructive notice of error prior to award. See Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123, and cases cited therein. In this regard, section 1-2.406-3(d)(1) of the FPR (1964 ed. circ. 1) states:

"Whenever the contracting officer suspects that a mistake may have been made in a bid, he shall immediately request the bidder to verify the bid. Such request shall inform the bidder why the request for verification is made--that a mistake is suspected and the basis for such suspicion, e.g., that the bid is significantly out of line with the next low or other bids or with the Government's estimate. \* \* \*"

The record indicates that the contracting officer only requested that Sunset verify its bid due to the possibility of an error in the low bid. There is no indication that Sunset was advised that its bid was \$3,036.00 less than the next low bid, or that it had knowledge of the variance between all the bids received and the Government estimate. Under the circumstances of this case, we find that the bid verification was not adequate and, therefore, the contract may be rescinded. 44 Comp. Gen. 383 (1965).

However, with regard to Sunset's alternative request for an upward adjustment of the bid price, we note that the contracting officer considered the evidence submitted in support of the alleged mistake and concluded that it was not sufficient under § 1-2.406-3(a)(2) of FPR (1964 ed. circ. 1) to permit correction. We have examined the evidence and find no basis for disagreeing with this determination.

  
Deputy Comptroller General  
of the United States