

DECISION



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

60595

FILE: B-185400

DATE: March 2, 1976

98528

MATTER OF: Westinghouse Electric Corporation

DIGEST:

1. Bidder who alleged mistake in bid after award may have contract rescinded without liability because contracting officer should have been on constructive notice of possible error and should have requested verification since only other bid was 240 percent higher than low bid and low bid was 11 percent below Government estimate.
2. Where contractor's worksheets substantiate claim of mistake in bid but do not clearly and convincingly establish intended price, proper remedy is rescission rather than reformation.

Invitation for bids (IFB) DS-7125 was issued on April 8, 1975, by the Bureau of Reclamation, Department of the Interior, for a 230-kilovolt power transformer. At bid opening on June 19, 1975, two bids were received: Westinghouse Electric Corporation (Westinghouse) submitted a bid of \$221,730 and the General Electric Company (GE) submitted a bid of \$530,114; the Government estimate was \$250,000. On June 27, 1975, a contract was awarded to Westinghouse. Thereafter, by letter dated June 30, 1975, Westinghouse advised the Bureau of Reclamation of an alleged mistake in its bid. Pursuant to Federal Procurement Regulations § 1-2.406-4(i) (1964 ed. circ. 1) the case was forwarded to our Office for resolution.

Westinghouse alleges that the mistake occurred as follows: Originally, Westinghouse prepared its bid in response to a previous solicitation for a similar transformer. Ultimately, Westinghouse decided not to submit a bid for this unit because of certain technical requirements in the solicitation. It is unclear from the record whether Westinghouse, in preparing its bid, intended to apply a 0.60 multiplier to the book list price of its transformer or a 0.70 multiplier. (A multiplier is a numerical percentage, expressed in decimal form, which the seller's list price is multiplied by to yield the customer's actual price.) In any event, a 0.60 multiplier was applied to the book list price of the unit under the first solicitation. Subsequently, in the preparation

of its bid for the instant procurement, Westinghouse intended to apply a 0.70 multiplier to its book list price. However, it instead inadvertently applied a 0.70 multiplier in addition to the 0.60 multiplier previously applied, producing an effective multiplier of 0.42. The result was a bid of \$221,730 instead of \$332,330, the intended bid. Westinghouse asks that we allow reformation of the contract to the \$332,330 intended price or, in the alternative, rescission of the contract. In support of its contentions, Westinghouse has submitted allegedly original contemporaneous worksheets.

The Bureau concedes that the evidence appears to support Westinghouse's claim that two multipliers were in fact used in arriving at the bid figure and that a mistake was made. However, it does not feel that the contracting officer had actual or constructive notice of this mistake prior to award of a contract and therefore recommends against reformation or rescission of the contract. It bases this opinion on the following factors:

- (1) "Of the 54 transformers currently in operation, 29 are of Westinghouse manufacture and the remainder were furnished by several other manufacturers. [Therefore] [w]hile not actually a standardized high-volume item in its line, Westinghouse can be considered the leader in this specialized high-voltage transformer field."
- (2) "[T]he high offer of General Electric Company was meant only as a courtesy, their indicating a willingness to undertake production of this specialized equipment for the Bureau if there were sufficient economic profits to justify the engineering effort involved."
- (3) The closeness of the Westinghouse bid to the Government estimate (11 percent below the Government estimate).

Westinghouse, on the other hand, contends that the mere fact that the GE bid was almost 2-1/2 times higher than its bid is sufficient by itself to charge the contracting officer with constructive

notice of a mistake in bid. Additionally, Westinghouse points out that in May 1974 it bid \$181,546 on a Bureau of Reclamation solicitation to rewind an existing transformer (as opposed to the instant solicitation to build a new transformer). Westinghouse argues that the 1974 bid to rewind the existing transformer, approximating the 1975 bid to build a new transformer, should have alerted the contracting officer to the possibility of a mistake in bid. Finally, Westinghouse disputes the accuracy of the Government estimate and questions how it could be based in part upon published Westinghouse price lists, when it is so far below the Westinghouse corrected bid price.

The general rule is that the sole responsibility for preparation of a bid rests with the bidder. Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123. Therefore, where the bidder makes a unilateral mistake in bid it must bear the consequences of its mistake unless the contracting officer was on actual or constructive notice of the error prior to award. Sundance Construction, Inc., supra. Further, we have held that where only two bids were received, a 70-percent disparity between the bids, standing alone, was sufficient to charge the contracting officer with constructive notice of a mistake in bid. 53 Comp. Gen. 30 (1973).

The record of the instant case indicates a 240-percent disparity between the bids received (\$530,114 v. \$221,730) and that Westinghouse's bid was 11 percent below the Government estimate (\$250,000). Although the Bureau bases its position in recommending against rescission or reformation of the contract, at least in part, on the contention that Westinghouse is a leader in the specialized high-voltage transformer field and GE is not a leader in the field we do not agree with its implicit conclusion: that the GE bid cannot, therefore, be used for purposes of comparison. Further, the record indicates that the Bureau reached the conclusion that GE's bid was merely a courtesy bid as a result of an oral inquiry to a GE representative. This suggests that despite the proximity of the Westinghouse bid to the Government estimate, the Bureau suspected the possibility of an error in either the GE or Westinghouse bid. However, instead of inquiring why the Westinghouse bid was so low, the Bureau inquired why the GE bid was so high.

In view of the above, it is our opinion that the 240-percent disparity between the two bids in the instant case presents an even stronger argument for charging the contracting officer with constructive notice than that in 53 Comp. Gen. 30, cited supra. Though the Bureau argues that Westinghouse's bid was close to the Government estimate, the 240-percent disparity between the bids should have alerted the contracting officer to the possibility of a mistake. Accordingly, we find that the contracting officer was on constructive notice of a possible mistake in Westinghouse's bid and therefore had the duty to seek verification of the bid. Since this was not done, a valid and binding contract was not consummated. 53 Comp. Gen. 30, supra.

Concerning Westinghouse's request for either reformation of the contract or in the alternative for rescission of the contract, reformation of a contract demands a higher degree of proof than rescission; i.e., presentation of evidence which clearly and convincingly establishes what the price would have been but for the error. Chernick and Chernick v. United States, 372 F.2d 492 (1967).

Although computations do appear on Westinghouse's allegedly original, contemporaneous worksheets which tend to substantiate the claim that multipliers of 0.60 and 0.70 were used in Westinghouse's calculations, the worksheets are devoid of computations tending to show how the corrected bid figure of \$332,330 was arrived at. Based on this, we conclude that Westinghouse's worksheets do not clearly and convincingly establish its intended bid price. Accordingly, the proper remedy in the case is rescission of the contract without liability to Westinghouse.

Deputy 
Comptroller General
of the United States