

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

60721

FILE: B-186004

DATE: April 6, 1976

MATTER OF: Graybar Electric Company, Inc.

99101

DIGEST:

Contracting officer was on constructive notice of possible mistake in low bid and should have requested verification of prices which were different from price bid on same item elsewhere in solicitation. Prices submitted by low bidder were 37 percent below those of next low bidder, whose prices were 22 percent below those of high bidder. Since documentation submitted by low bidder does not clearly and convincingly prove any intended bid prices, rescission rather than reformation of contract would be permissible.

The Director, Supply Service, Department of Medicine and Surgery, Veterans Administration (VA), has submitted the following matter to our Office for decision as a doubtful case.

Solicitation No. 516-19-76 was issued by the VA Center in Bay Pines, Florida, for various numbered items of electrical material. Graybar Electric Company, Inc. (Graybar), was notified that it had been awarded seven of the numbered items. By telephone and by letter, the contracting officer was advised by Graybar that it had mistakenly quoted solid copper wire prices on the awarded item Nos. 43-46 instead of prices for the required stranded copper wire.

With the letter, Graybar submitted the pricing schedule of a supplier and work papers. According to Graybar the bid prices for the four items calling for stranded copper wire had been computed from a solid copper wire list price of \$28.96 per 1,000 feet (the solicitation called for quotes on rolls of 500 feet). That price was multiplied by a 0.7500 supplier discount factor to arrive at the price of \$21.72 per 1,000 feet which was twice successively discounted by 5 percent to \$19.60, or \$9.80 per 500 feet. Finally, Graybar added a 1-percent profit factor to reach the quoted price of \$9.90 per 500 feet. The supplier's list price for stranded copper wire was \$36.91. Subjecting that price to the above calculations, Graybar states "* * * we should have quoted the items at \$25.23

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per thousand [\$12.62 per 500 feet] if we had quoted properly." Graybar requested that its contract prices on these items be increased accordingly, or, in the alternative, that they be increased to prices 10 percent lower than those of the next low bidder, or \$12.25.

The contracting officer believes that he was on constructive notice of the possibility of the mistake in bid. First, on another item in the solicitation for identical stranded copper wire (except for color), Graybar bid the unit price of \$14.00 per 500 feet. Second, a 37-percent difference in price existed between Graybar's prices and those of the next low bidder; the price differential between the prices of the next low bidder and those of the high bidder was 22 percent. However, the contracting officer believes that the alternate offer of Graybar should be accepted less an assessment of the administrative costs for processing the mistake claim. The Director, Supply Service, Department of Medicine and Surgery, VA, recommends an increase to \$12.20 based on an invoice from another supplier to Graybar.

We agree, for the same reasons set forth by the contracting officer, that he was on constructive notice of a possible mistake and should have requested verification of the prices. What occurred here, that is, acceptance of a bid by the Government with constructive notice of the possibility of an error in bid, does not create a binding contract, and the contract may be properly subject to rescission or reformation, 49 Comp. Gen. 446 (1970). To permit reformation, clear and convincing evidence of the bid actually intended must be submitted.

Because Graybar did not intend to bid on stranded copper wire for item Nos. 43-46, because there is nothing in the work papers (only a list of each item with the price bid and a supplier's price list were submitted) definitively showing how Graybar would have bid on the higher-priced stranded copper wire had it so intended, and because there is no explanation of why Graybar would have bid \$12.62 when it bid stranded copper wire at \$14.00 on another item, we do not believe that any intended bid price has been clearly and convincingly proven. Regis Milk Company, B-180930, June 17, 1974, 74-1 CPD 328; B-174620, February 2, 1972.

Accordingly rescission rather than reformation of the contract on these items would be permissible.


Acting Comptroller General
of the United States