

DOCUMENT RESUME

02355 - [A1372353]

[Reformation of Contract to Permit Additional Payment].
B-188823. May 10, 1977. 2 pp.

Decision re: C. L. Fogle, Inc.; by Paul G. Dembling (for Elmer
B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: National Park Service.

Authority: B-173990 (1971). B-172986 (1971). B-167954 (1969).
F.P.R. 1-2.406-3(d)(1).

Contractor requested reformation of contract on the grounds of a costing error in its bid, discovered after the award. The prospective contractor's "on-the-spot" verification at bid opening that he was satisfied with the bid was inadequate verification. Prior to the award the contracting officer should have known, but failed to apprise the bidder, of the basis for the suspected mistake. (Author/SC)

02355

M. Eaton
Proc II

DECISION



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

FILE: B-188823

DATE: May 10, 1977

MATTER OF: C. L. Fogle, Inc.

DIGEST:

Prospective contractor's "on the spot" verification at bid opening that he was satisfied with bid was inadequate verification because prior to award contracting officer should have known, but failed to apprise bidder, of basis for suspected mistake.

The Department of Interior has submitted for our decision the request of C. L. Fogle, Inc. (Fogle) for reformation of contract No. CX-8000-7-9003 on grounds of a \$15,000 omission from its bid, discovered after award. Work on the National Park Service contract, for construction of percolation ponds at El Portal, Yosemite National Park, California, has been substantially completed.

The bidder's president, Mr. Fogle, attended the bid opening at Yosemite on Saturday, February 19, 1977. Its low bid, \$90,055, was considerably less than the other two bids, \$121,025 and \$159,250. (The Government estimate was \$175,600.) When questioned at the bid opening, Mr. Fogle stated that although he did not understand why he was so low, he was satisfied with his bid. Returning to his Office in Redding, California, however, the bidder discovered that he had failed to include equipment rental for pond excavation. Excavation was a category of work which was separately priced in the bid schedule. Mr. Fogle informed the contracting officer of his mistake on Tuesday, February 22, 1977, the same day he received notice of the award.

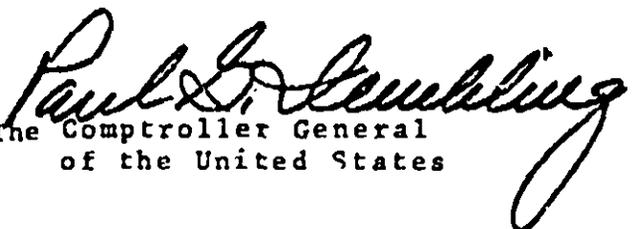
B-188823

Worksheets show that for 15,000 cubic yards of excavation, Fogle intended a bid of \$2.90 a cubic yard and that his charge for equipment rental was to be \$1.00 a yard. He actually bid \$1.90 a cubic yard for excavation work, omitting the charge for equipment rental. Fogle's extended bid for excavation work was \$28,500. The abstract of bids shows that the other bids for pond excavation were \$3.40 a cubic yard (\$51,000 extended) and \$4.00 a cubic yard (\$60,000 extended), while the Government estimate was \$4.25 a cubic yard (\$63,750 extended). The contracting officer believes that Fogle made an honest mistake and recommends reformation of the contract to permit payment of an additional \$15,000.

We agree with the contracting officer. If a contracting officer suspects a mistake, Federal Procurement Regulations (FPR) § 1-2.406-3(d)(1) requires that a request for verification be made and that the bidder be informed why the request for verification is made--that a mistake is suspected and the basis for such suspicion.

Our decisions regarding "on the spot" verification have involved bidders who were requested by telephone to confirm their bids and who were not informed of the nature or extent of their suspected mistakes. See B-173990, December 29, 1971; B-172986, August 30, 1971, and B-167954, October 14, 1969, in which we found that verification was not adequate and approved increases in contract prices. While in this case the bidder was present at the bid opening, it is not apparent that the bidder was aware of the very great differences in the bid and estimated prices for the excavation work. Moreover, while the contracting officer should have known prior to award of the probability of error in the price for excavation, the bidder was not apprised of this suspected mistake.

Accordingly, we must conclude that the request for verification, if any, was inadequate and that the contract price may be reformed as recommended by the agency.


For The Comptroller General
of the United States