

*H. D. C.*  
*11/15/77*

**DECISION**



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

FILE: B-189605

DATE: November 15, 1977

MATTER OF: Tri-State Maintenance, Inc.

**DIGEST:**

Request for modification of contract price due to alleged error in bid claimed after award is not allowed, since contracting officer adequately discharged bid verification duty by calling to bidder's attention variance in bids received and bidder verified bid. Also, where error was not so gross as to suggest that Government was "obviously getting something for nothing," relief is not granted.

On the basis of a mistake in bid alleged after award, Tri-State Maintenance, Inc. (Tri-State), requests modification of the contract awarded under solicitation No. DADA15-77-B-0039, issued on May 11, 1977, by Walter Reed Army Medical Center (WRAMC). If the request is denied, Tri-State requests that it be allowed to withdraw its bid, which we view as a request for rescission of the contract.

Tri-State does not contest that a legally enforceable contract exists, but rather asks for relief based on the "great burden" it faces under the contract which could result in bankruptcy. However, unless specifically authorized by statute, no agent of the Government, our Office included, may waive rights vested in the Government because of hardship or equities in favor of the contractor. Damascus Hosiery Mills, Inc., B-182406, June 3, 1975, 75-1 CPD 336. Notwithstanding, we will examine the record to see whether there are legal grounds for relief.

Five bids were received by bid opening (June 2, 1977). Tri-State's bid was the lowest (\$13,922.46 per month). The other four bids, on a per month basis, were \$15,884.01, \$15,892.34, \$16,539.09 and \$17,133.37. Since Tri-State's bid was approximately 12-1/2 percent lower than the next low bid, the contracting officer advised Tri-State that its bid was the lowest, supplied the four other bid amounts and requested verification of its bid. Tri-State verified its bid by letter dated June 4, 1977, and on that basis, the contract was awarded to Tri-State on June 21, 1977.

04205

4460

B-189605

On June 29, 1977, Tri-State notified WRAMC that an error had been made in the preparation of the bid. In the addition of the costs, \$1,458.79, representing taxes and insurance, was omitted and this was not noticed until Tri-State was preparing its contract budget and cost report. Tri-State now seeks to have the contract price adjusted to \$15,381.25 per month, which is \$502.76 below the next low 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 when a bidder makes a mistake in bid it must bear the consequences of its mistake unless the mistake is mutual or the contracting officer was on actual or constructive notice of error prior to award. See Ames Color-File Corporation, B-185873, March 26, 1976, 76-1 CPD 199. It is equally well established, however, that if a material mistake is made by one party to a contract and the mistake is known by the other party, or because of accompanying circumstances the other party had reason to know of the mistake, the latter party has no right to take advantage of the mistake and the party making the mistake has the right to rescission and restitution. 48 Comp. Gen. 672, 675 (1969).

With regard to the issue of constructive notice, Armed Services Procurement Regulation (ASPR) § 2-406.1 (1976 ed.), in pertinent part, provides:

"After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. \* \* \*"

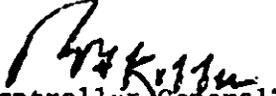
When verification is requested, the bidder must be informed of the specific reasons for the request, and any particular errors suspected. See Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393; Atlas Builders, Inc., B-186959, August 30, 1976, 76-2 CPD 204. If, however, the contracting officer's only cause for suspecting error is the disparity between bids, the verification duty is discharged if the bidder knows the basis for the request for verification. See Atlas Builders, Inc., supra; and Ames Color-File Corporation, supra.

B-189605

Since Tri-State's alleged error in computation was not apparent or capable of being discovered from the bid, the contracting officer had no basis for suspecting the specific nature of the possible error. Therefore, the contracting officer's verification duty was adequately discharged when it was brought to Tri-State's attention that the possibility of an error existed in its low bid due to the variance between it and the other bids received.

In appropriate cases, however, if the mistake was so gross that it could be said the Government "was obviously getting something for nothing," relief from the consequences of the mistake may be granted, notwithstanding proper bid verification. See Yankee Engineering Company, Inc., B-180573, June 19, 1974, 74-1 CPD 333, citing Keap v. United States, 38 F. Supp. 568 (1941). In the present case, the error is not so gross as to suggest that the Government "was obviously getting something for nothing."

Accordingly, no legal basis exists for allowing Tri-State's requests.

  
Deputy Comptroller General  
of the United States