

J. Vickers
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DECISION



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

FILE: B-187273 **DATE:** January 19, 1978

MATTER OF: United Sound, Inc.

DIGEST:

Contractor who alleged mistake in offer after award is denied relief even though circumstances called for verification and it was not obtained, since contractor has not established that error was made and agency indicates that items alleged to have been omitted from offer were discussed with contractor during pre-award survey.

United Sound, Inc. (United), has presented a claim against the United States Air Force for an alleged mistake in its offer under contract No. F41589-76-D-0005 for the furnishing of stereo and monaural records.

United's claim is based on the contention that it was not aware until 2 days after it received the award that it would be required to furnish master acetates, metal stampers, record mailers and bulk boxes under the contract.

The Air Force received the following three offers for the contract:

United	\$ 145,620.29
Keycor-Century Corp.	199,922.20
Supreme Audio-Visual Products, Inc.	1,376,965.25

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Following receipt of the offers, a preaward survey was conducted on United and award was made on August 1, 1975. Despite the discrepancy between the offers of United and Keysor, the contracting officer did not request verification of United's offer.

On August 5, 1975, 2 days after United received the contract documents, United notified the Air Force that modification had been made to the requirements contained in the solicitation and that it now appeared that United would have to furnish lacquer masters, metal stampers, record mailers and bulk boxes.

United alleges that it submitted an offer for and planned to furnish only those items listed in section "E" which was the offer schedule. The schedule contained a list of 11 items with estimated quantities and a space for a unit price for each item and an extended price. United further argues that this schedule and paragraph 2(d) of section "C" (Standard Form 33), which stated "offers for supplies and services other than those specified will not be considered unless authorized by the solicitation," led it to believe only those 11 items were required.

The Air Force responds to the above arguments by stating that section "G" of the solicitation clearly defined the packaging requirements and paragraph 2(c) of SF 33A noted that unit prices included packing unless otherwise specified. Regarding the master acetates and metal stampers, the contracting officer advised United in his initial denial of the request for correction of the following:

"a. Regarding the master acetates, the Government maintains that the specifications require finished pressings to be produced from master tapes procured under the contract or furnished by the Government. The mastering process is just one step in phonographic record production, and is obviously required in order to furnish records meeting the specifications of Section F. Paragraph 6,

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Section H, indicated specifically that the contractor will receive master acetates for the purpose of manufacturing metal parts. Paragraph 1, Section H, specifies the Government furnished property and master acetates are not listed. It is clear, therefore, that the Government does not intend to provide the contractor with master acetates."

When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake is mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid or binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the offer. In determining whether a contracting officer has a duty to verify offered prices, we have stated that the test is whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer, without making it necessary for the contracting officer to assume the burden of examining every offer for possible error. Charles E. Weber & Associates, B-186267, May 11, 1976, 76-1 CPD 319.

Based upon our review of the record, we find, and the Air Force agrees, that the contracting officer should have been on notice of the possibility of an error in United's offer. United's offer was 37 percent less than the next low offer received and almost half the amount of the Government estimate for the procurement of \$285,765.41. Moreover, the contracting officer was aware that at least one of the bidders, Keysor, had difficulty interpreting the specifications. Prior to the submission of bids, Keysor contacted the contracting officer and inquired as to what the specifications required.

However, the Air Force questions the manner in which an error was made in United's offer based on information

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obtained by the preaward survey team. The preaward survey lists a firm which supplies master acetates to United and another firm which manufactures boxes and handles packaging. The Air Force argues that as United furnished this information during the preaward survey, it was aware it would have to furnish these items prior to the award notice being sent and the allegation of error.

United has responded that it deals with these two firms on a regular basis and has standing quotes and delivery schedules from each and, therefore, when these firms were contacted, they would not know for what procurements items were requested by United but would merely respond with the standing quote and delivery schedule.

While United indicates that the information regarding the master acetates and the boxes and packaging was obtained by the Air Force from firms with which United ordinarily deals, the Air Force has indicated that the preaward survey team reviewed with United the entire process it would have to perform under the contract and it knew what was required and furnished the names of its suppliers in connection with that discussion. In the circumstances and in the absence of any worksheets prepared for the submission of the offer showing that the alleged items were omitted from the offer, we are unable to conclude that an error was made in the offer as alleged.

Accordingly, United's request for relief is denied.


For The Comptroller General
of the United States