

DECISION

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

FILE: B-191867

DATE: November 8, 1978

MATTER OF: John P. Ingram, Jr.

8291

DIGEST:

1. Contract should not have been awarded on basis of on-the-spot verification but doubt should have remained and further verification sought by contracting officer.
2. The general rule applicable to mistake in bid alleged after award is that sole responsibility for preparation of bid rests with bidder, and that where bidder makes mistake in bid it must bear consequences of its mistake unless mistake is mutual or contracting officer was on actual or constructive notice of error prior to award.
3. If contracting officer suspects mistake in bid, Federal Procurement Regulations section 1-2.406.1, requires request for bid verification be made and that bidder be informed why this request is being made.
4. On-the-spot verification was not adequate where amount of bid deviation was unreasonable

The Veterans Administration, Department of Medicine and Surgery, referred to our Office for determination as a doubtful question whether a contracting officer was on constructive notice of the probability of a mistake in bid notwithstanding an on-the-spot verification by the owner of John P. Ingram, Jr. (Ingram), contractors and builders, the firm awarded the contract.

On September 12, 1977, Invitation for Bids (IFB) No. 691-179-77, was issued by the Veterans Administration Wadsworth Hospital Center for alterations to its Geriatric Research Building. Because of fund limitations the IFB was issued with four alternatives. Item No. 1 provides for the performance by the contractor of all services specified for construction and completion of the Geriatric Research Education and Clinical Center on the second floor of Building 113 of the Hospital Center. Item No. 2 omits demolition, purchase and installation of floor tile and provides for purchase by the Government of new light fixtures. Item No. 3 omits in addition to the omissions in Item No. 2 all work on specified toilets and showers. Item No. 4 omits in addition to the omissions in Items Nos. 2 and 3 the purchase and installation of certain equipment.

The bids were opened on September 27, 1977. The abstract of bids shows only two bidders, James A. Hill (Hill) and Ingram. The following information is derived from the abstract:

<u>Item</u>	<u>Hill</u>	<u>Ingram</u>	<u>Difference</u>
1	\$156,056	\$113,987	\$42,071
2	156,638	106,789	49,849
3	151,679	98,896	52,783
4	148,779	71,799	76,982

Except for Item No. 4, the items in Ingram's bid vary from each other by from \$7,000 to \$8,000; Item No. 4 is \$27,099 less than Item No. 3.

The contracting officer states that both bidders were present at the bid opening and that after the bids were opened and read he asked Mr. Ingram " * * * if there was a problem with his bid because of the difference in bid prices." The contracting officer states that Mr. Ingram replied " * * * that everything was in order", and because " * * * Mr. Ingram has received many awards at this Center and his bids always tends (sic) to be low, I did not pursue the matter any further."

Mr. Ingram, on the other hand, stated in a letter to the contracting officer, under cover of which supporting work sheets were furnished, that "When all the bids were opened I causally (sic) indicated that I thought all my bids were in order, (I was low bidder on three projects this date) but that I would let them know if there were any problems."

Because the Ingram bid on Item 4 was close to the project budget, it was accepted on September 28, the next day. By letter of September 30, 1977, Ingram advised the contracting officer that the bid for Item 4 was in error and should have been \$93,338, a difference of \$21,541. Ingram alleged that:

"This error was made in deducting the various alternates from the preceding alternate and adding on the overhead, profit, insurance, bonding, supervision and contingencies."

The work sheets furnished by Ingram in support of the allegation of mistake in bid indicate that Ingram deducted the cost, estimated at \$4,275, of the equipment omitted in option 4 from the net out of pocket cost figure in option 3, \$76,074 (increased to the bid figure of \$98,896 by adding 30% for overhead and profit) for a net cost of \$71,799, which increased by 30% totals \$93,338. The net figure was at the bottom of the work sheet. Because of the lack of room at the bottom of the sheet the total bid figure was off-set to

the left, unlike the totals of the other options. In recording the figures on the bid, Ingram transferred the net figure, which was in the column of figures rather than the increased figure which was offset. The contracting officer states as his opinion that an honest mistake was made by the contractor, and recommends that the change in price be allowed.

While the contracting agency asks whether the contracting officer should have been on constructive notice after the on-the-spot verification, we believe that the real issue here is whether the on-the-spot verification was adequate.

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 that where 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 Cargill, Inc., B-190924, January 17, 1978, 78-1 CPD 43; Anabolic, Inc., B-190342, January 26, 1978, 78-1 CPD 69; Bromley Contracting Co., Inc., B-189972, February 8, 1978, 78-1 CPD 106; Morton Salt Company--Error in Bid, B-188392, April 19, 1977, 77-1 CPD 273; Tri-State Maintenance, Inc., B-189605, November 15, 1977, 77-2 CPD 369.

If a contracting officer suspects a mistake, Federal Procurement Regulations (FPR) section 1-2.406.1 require that a request for bid verification be made and that the bidder be informed why this request is being made.

In a series of decisions involving on-the-spot verifications, we have held the "on-the-spot" verification insufficient where reasonable doubt should have remained after verification. See B-162820, November 8, 1967; B-167954, October 14, 1969. Should a reasonable doubt have remained in the present instance after the "on-the-spot" verification which would have required further effort by the contracting officer?

In each of the cases cited the "on-the-spot" verification was qualified, and we held that because of the equivocal nature of the verification a reasonable doubt should have remained. In the present record the evidence is in conflict whether the verification was qualified or unqualified. However, the only difference between item 3, for which Ingram bid \$98,896, and item 4, for which Ingram bid \$71,797, a difference of \$27,099 is some equipment, which Hill had evaluated at only \$2,900, or approximately one-tenth of the difference between the Ingram bids for items 3 and 4. There is no evidence in the record that this particular discrepancy was brought to the attention of Ingram by the contracting officer. In view of this unreasonable bid deviation we believe that a doubt should have remained even if the on-the-spot verification was, in fact, unqualified, and a written verification requested by the contracting officer.

The acceptance of a bid with actual or constructive knowledge of error therein does not consummate a valid and binding contract. Murphy Brothers, Inc., B-189756, March 8, 1978, 78-1 CPD 182. We conclude that in this case the Government had constructive knowledge of a mistake and no contract was effected at the award price. Ingram should, therefore, receive payment on a quantum valebant or quantum meruit basis, that is, the reasonable value of the service and materials actually furnished by Ingram to the Government not to exceed the amount which Ingram alleges was intended to be bid.

R. F. Keenan
Deputy Comptroller General
of the United States