

DECISION



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

9577

FILE: B-194231

DATE: March 29, 1979

MATTER OF: Electro Research, Inc. DLG 01346

DIGEST:

[Request For Reformation of Contract]

1. Contracting officer's duty to notify bidder of suspected mistake was not met where bidder was advised that its bid was "a little out of line," but not that bid was 37 percent lower than next low bid and 56 percent lower than Government estimate.
2. Where contract is entered into after bidder verifies prices in response to inadequate request for verification, no binding contract is created. Since bidder has clear and convincing proof of bid prices actually intended, and price is still lower than next low bid, contract may be reformed.

The Department of Transportation, Federal Aviation Administration (FAA), has submitted for our decision the request of Electro Research, Inc. (Electro), for reformation of contract No. DOT-FA77AC-7596 on grounds of a \$37,085.24 omission from its bid alleged after award.

The FAA issued an invitation for bids for 331 IF amplifiers. The record shows that bids were opened on August 5, 1977, with the following results:

<u>NAME OF BIDDER</u>	<u>UNIT PRICE</u>
Electro Research, Inc.	\$218.52
Teletek Enterprises	348.24
Struthers Electronics	388.90
Symetrics Industries	389.70
Mater Manufacturing	419.23
Astra Products	424.40

004726

<u>NAME OF BIDDER</u>	<u>UNIT PRICE</u>
Trilon Education	\$420.00
Collier Tech Service	474.57
Solid State Sources	495.00
Applications Technology	501.13
Acudata Systems	507.23
MCL Inc.	591.99
BYR Inc.	595.00
General Indicator	541.71
General Electrodynamics	609.67

The Government estimate was \$500.75 per unit.

The contracting officer contacted Electro by telephone on August 8, 1977, for verification of its bid, advising Electro that its bid appeared to be "a little out of line with other bids received." Electro confirmed its bid as submitted by telegram of August 9, 1977.

On August 30, 1977, an onsite preaward survey of Electro was made. During the survey a copy of Electro's worksheets was given to the FAA representative. In addition, a copy of the worksheets was sent to the contracting officer on September 6. FAA awarded the contract to Electro on September 16, 1977.

By letter of November 2, 1978, Electro notified the contracting officer that its bid contained a mistake of \$37,085.24. Electro furnished the contracting officer with its original worksheets and adding machine tapes, which were identical to those sent earlier to the contracting officer.

The worksheets show the cost for materials as \$20,233.21. However, when items shown on the material list are correctly extended and added, actual material cost is \$49,548.77. By carrying forward the correct material cost, the resulting total price would have been \$109,416.30 divided by 331 units for a unit price of \$330.56. The unit price was \$218.52 when the incorrect materials cost of \$20,233.21 was carried forward. The FAA believes that Electro made an honest mistake and recommends reformation of the contract to permit payment of an additional \$37,085.24.

Federal Procurement Regulations § 1-2.406-3(d)(1) (1964 ed. circ.1) provides that whenever a contracting officer suspects that a mistake may have been made, he shall request the bidder to verify the bid. Such request shall inform why the request for verification is made, that a mistake is suspected, and the basis for such suspicion, e.g., that the bid is significantly out of line with the next low bid or other bids or with the Government's estimate.

The FAA contends that the contracting officer failed to apprise Electro adequately of the suspected mistake, and that the contracting officer remained on constructive notice of the possibility of a mistake in the bid due to the large disparity between the low bid and the next three lower bids as well as the Government estimate. The FAA also stated that the contracting officer could have reviewed the copy of Electro's worksheets in her possession and discovered the mistake prior to award.

As a general rule, in order for a bidder to obtain relief on the basis of an allegation of a mistake in bid alleged after award, the mistake must have been mutual or the contracting officer must have been on actual or constructive notice of the error prior to award. Auto-clave Engineers, Inc., B-182895, May 29, 1975, 75-I CPD 325. When the bidder alleging the mistake has been requested to and does verify that the original price is correct, the subsequent acceptance of the bid by the Government creates a valid and binding contract which will not be disturbed by a later allegation of error. Peterman, Windham & Yaughn, Inc., 56 Comp. Gen. 239 (1977), 77-1 CPD 20. Proper verification, however, requires that in addition to requesting confirmation of the bid price, the contracting officer must apprise the bidder of the mistake which is suspected and the basis for such suspicion. General Time Corporation, B-180613, July 5, 1974, 74-2 CPD 9.

Regarding FAA's contention that the contracting officer could have reviewed Electro's worksheets and discovered the mistake prior to award, we do not believe that the duty to verify consists of in-depth review of

the bidder's worksheets by the contracting officer after the bid has been verified.

We believe, however, that the request for verification in this case was inadequate and, thus, no binding contract was entered into.

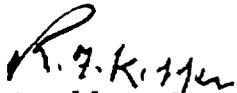
In a similar case, the low bid on two items was 34 and 36 percent below the next low bid, and 19 and 15 percent below the Government estimate. The contracting officer's request for verification advised the bidder only of the disparity between his bid and the Government estimate. We held that the bidder "was advised of the reasons only in part and, consequently, we must conclude that request for verification was not adequately made." Department of Agriculture - Francisco Ojeda, B-190704, January 9, 1978, 78-1 CPD 16. See also Frankel Co., Inc., B-187693, November 23, 1976, 76-2 CPD 446; Seaside Surplus, B-182893, January 17, 1975, 75-1 CPD 38.

In other cases in which the contracting officer requested verification because of discrepancies in the bid prices received, we have found the verification adequate only when the contracting officer revealed the discrepancies to the bidder or the bidder otherwise had knowledge. See Frank Black, Jr., Inc., B-191647, June 26, 1978, 78-1 CPD 463; J.D. Shake Construction Company, Inc., B-190623, April 25, 1978, 78-1 CPD 318; William M. Young & Company, B-188374, April 18, 1977, 77-1 CPD 271; Porta-Kamp Manufacturing Co., Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393; 47 Comp. Gen. 732 (1968).

Electro's bid was approximately 37 percent below the next low bid and 56 percent below the Government estimate. It is doubtful that the contracting officer's statement that Electro's price was "a little out of line with other bids received" alerted Electro to the specific reason for the request for verification, that is, the disparities between its price and the next low price or the Government estimate, as required by the above-cited cases.

In view of the foregoing, we find it unnecessary to address FAA's alternative argument that it would be unconscionable for the Government to refuse to allow correction of the mistake.

Since Electro has presented documentation which clearly indicates that its intended bid price was lower than the next low bid, and the contracting officer failed in his verification duty, the contract price may be reformed as administratively recommended.


Deputy Comptroller General
of the United States