

DECISION



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

9835

FILE: B-194380

DATE: April 17, 1979

MATTER OF: Department of the Interior

DIGEST: *[Request for Relief From Mistake In Bid Alleged After Award]*

1. Where due to substantial difference between low bid and next low bid contracting officer advises low bidder of difference and possibility of error in bid and where low bidder nonetheless verifies its bid price to be correct, contract awarded to low bidder is valid and binding on parties to contract.
2. Relief for mistake in bid alleged after award may not be granted on basis of unconscionability where second high bid was approximately 78 percent higher.

Invitation for bids No. FWS-4-78-106 was issued by the Department of the Interior, Fish and Wildlife Service, for the procurement of lumber and timber materials. Prospective bidders were advised in the invitation that the estimated cost range for the materials was over \$100,000. The following bids were received:

Southern Wood Piedmont Company	\$ 54,349.54	<i>DLG00052</i>
R. H. Whelan Company	95,986.00	
American Creosate Works Inc.	124,963.60	
Atlantic Wood Industries Inc.	158,230.00	

The day after bid opening, September 22, 1978, the contracting officer called the low bidder and advised it that because its bid was considerably lower than the next low bid he was required to ask that the correctness of the bid price be confirmed. On September 25 the low bidder confirmed its bid price.

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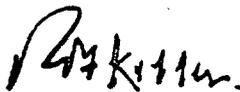
Award was made on September 29. On October 10 the low bidder contacted the contracting activity and alleged that it had erroneously computed its bid price. At first the low bidder advised that its bid price should have been \$100,455.71, but this was later changed to \$103,031.41. The error allegedly occurred because the bidder did not apply the requirements in amendment No. 1 to the invitation to the entire amount of materials to be purchased. The question posed is whether the low bidder may be granted relief in view of its alleged error.

The general rule applicable to a mistake in bid alleged after award is that the sole responsibility for the preparation of a bid rests with the bidder, and 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 an error prior to award. When the contracting officer is on notice of a possible mistake in bid, he is under a duty to apprise the bidder of the suspected mistake and the basis for such suspicion and to request the bidder to verify its bid. When a bidder who is so requested does verify its bid, the subsequent acceptance of the bid by the contracting officer creates a valid and binding contract. Cabarrus Construction Company, Inc., B-192710, September 13, 1978, 78-2 CPD 200.

In the instant case, the low bidder was advised there was a substantial difference between its bid price and the next low bid price. It was on notice of the substantial difference between its bid price and the Government estimate stated in the invitation. Notwithstanding, it verified that bid price as being correct, and the contracting officer in reliance on this verification made an award. In view of these facts, we believe the contract is valid and binding, as awarded.

In addition, we conclude that relief may not be granted on the basis of unconscionability. We have found contracts to be unconscionable where the second low bidders' prices have been 280 and 300 percent greater than the awardees' prices; however, where the second low bidders' prices were 53 and 58 percent higher we found these differences insufficient

for findings of unconscionability. Walter Motor Truck Company, B-185385, April 22, 1976, 76-1 CPD 272, and cases cited. Here the second high bid was approximately 78 percent higher. In addition, the invitation, as issued and amended, stated that the estimated cost range for the materials was over \$100,000. In these circumstances, we do not find the doctrine of unconscionability applicable.



Deputy Comptroller General
of the United States