

11517

DECISION



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

FILE: B-195871

DATE: September 25, 1979

MATTER OF: Al's Carpet Clean and Janitorial Service

DIGEST: DLG 02858

1. Where contracting officer advises low bidder of possibility of error in bid due to substantial difference between its bid and next low responsive bid and where low bidder nonetheless verifies bid price to be correct, contract awarded to low bidder is valid and binding on parties to contract.
2. Relief may not be granted on basis of unconscionability, since circumstances do not establish that Government is "obviously getting something for nothing."

The General Services Administration (GSA) has forwarded for our consideration a ^{AGC 00017} claim of mistake in bid submitted by Al's Carpet Clean and Janitorial Service (Al's) after the award to the firm of a contract for janitorial services.

DLG 00234

On October 31, 1978, invitation for bids (IFB) PBS-BMD-79-0012, a total small business set-aside, was issued by the General Services Administration (GSA), San Francisco Regional Office. Bids were opened November 28, 1978, and the three bids received ranged from Al's bid of \$39,998.88 to \$78,000. The Government's estimate for this work was \$51,777.11. The second low bid in the amount of \$66,508.80 was determined to be nonresponsive because the bidder failed to submit with its bid a required bid guarantee.

In view of the difference between Al's bid and the only other responsive bid received, a telegram was sent to Al's on December 5, 1978, requesting the firm to review its bid to determine whether a mistake

~~009085~~

had been made stating that its bid "is significantly below next [responsive] bid of \$78,000.00." By letter dated December 6, 1978, Al's confirmed its bid price quotation "to be true and correct as stated" and explained that "Our only change from last year was to justify the wage increases of employees for this coming year." Thereafter, an award was made to Al's on December 13, 1978.

Al's orally advised the GSA regional office after performing the first month of services that an error had been made in computing its bid price in not including its total profit, administrative cost and supplies in its price. The firm submitted its worksheets and contends that its mistake in addition amounted to \$1,000 per month. Al's contends its intended price was \$4,333.24 per month or \$51,998.88 per year. The worksheets show a monthly price of \$4,333.24 and the contracting officer recommended that the contract be reformed to include the price of the intended bid. The contracting officer takes the position that the evidence submitted by Al's is clear and convincing as to the existence of the mistake and the intended bid price. The GSA Regional Counsel in San Francisco reviewed the matter and disagreed with the contracting officer's determination on the grounds that Al's mistake was unilateral and, since the contractor verified its bid price as requested, there was no basis for allowing reformation.

The Federal Procurement Regulations (FPR) § 1-2.406-1 (1964 ed.) provides:

"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."

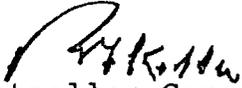
The contracting officer apprised Al's of an apparent mistake and pointed to the disparity between Al's bid and the second low responsive bid as the basis for his suspicion.

In our opinion, the contracting officer adequately satisfied his verification duty. Al's was the incumbent contractor for the work for 1978 and its price under that contract was \$3,194.85 per month as compared to its current price of \$3,333.24 per month. Although Al's did not seek to explain the disparity between its bid and the second low bid, the contracting officer knew that Al's understood the scope of the work since it was the incumbent contractor.

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 and a postaward claim of error will normally be denied. See Cabarrus Construction Company, Inc., B-192710, September 13, 1978, 78-2 CPD 200. However, our Office has held that relief on the grounds of unconscionability may be granted where the contract price is so low that the Government is "obviously getting something for nothing." Yankee Engineering Company, Inc., B-180573, June 19, 1974, 74-1 CPD 333; 53 Comp. Gen. 187 (1973). We have found contracts to be unconscionable when the disparity between the awardee's bid and the second low bid has been 280 and 300 percent. On the other hand, a difference of 78 percent has been determined insufficient to demonstrate unconscionability. See Department of the Interior, B-194380, April 17, 1979, 79-1 CPD 271. In considering this issue, we have reviewed factors such as the quantum of error, the method of verification, or the suspicion of a specific mistake in addition to price differential. See

Peterman, Windham & Yaughn, Inc., 56 Comp. Gen. 239 (1977), 77-1 CPD 20; Bureau of Reclamation, Department of the Interior, B-187718, December 15, 1976, 76-2 CPD 499. Here the contract price, although approximately 50 percent lower than the next responsive bid, was not substantially below the Government estimate nor less than the price bid by AI's in 1978 for substantially the same services.

Under the circumstances we do not believe that the Government is "obviously getting something for nothing," and, therefore, enforcement of the contract at the awarded price is not unconscionable. Accordingly, we find no basis for revision of this contract.


Deputy Comptroller General
of the United States