

Mr Kleiman
4264 PLI

DECISION



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

FILE: B-196543

DATE: July 11, 1980

MATTER OF: Iberville Services, Inc.

DIGEST:

Where contracting officer is dead and there are no records in existence to establish reason that he requested only responsive bidder to confirm its bid price, GAO does not believe that contracting officer reasonably should have suspected error in low bid because (1) low bid was almost \$130,000 above Government estimate of \$716,000, and (2) no one has suggested that Government estimate was in error. Thus, adequacy of verification is not relevant and claim for reformation of contract is denied.

Protest
CONCERNING

On May 12, 1977, the Federal Energy Administration (FEA), now the Department of Energy (DOE), issued invitation for bids (IFB) No. 13-70150, for intermediate fill construction at the Strategic Petroleum Reserve's Bayou Choctaw storage complex. The IFB contained a statement of work which included, among other tasks, the furnishing and installation of concrete weight coating to Government furnished 24-inch pipe. The IFB specified that the "[c]oating shall be 3.6 inches of 140 lb. per cu. ft. concrete."

Addendum No. 2 deleted the 3.6 inches of concrete weight coating and substituted a 1.6 inches of concrete coating requirement. Addendum No. 3 restored the thickness of the concrete weight coating to 3.6 inches.

On June 9, 1977, two bids were opened at the scheduled time, 11 a.m. Both bidders had representatives at the bid opening. The abstract of bids showed the following results:

Iberville Services, Inc. (ISI)	\$845,274
Love Engineering Co. (Love)	2,765,100
DOE estimate	716,000

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Upon opening Love's bid, the contracting officer declared it nonresponsive since it included several pages of qualifications. Upon opening ISI's bid, the contracting officer orally requested ISI to return by 2 p.m. with a statement confirming its bid price. ISI subsequently returned with a statement verifying that its bid was numerically correct.

The contract was awarded to ISI on June 18, 1977. After award, ISI discovered that the contract called for 3.6 inches of concrete weight coating instead of 1.6 inches, which was the thickness upon which ISI's bid had been based. Nevertheless, ISI performed the contract in accordance with its terms; however, ISI now submits a claim for \$58,122.74 representing the additional cost of the 3.6 inches of concrete weight coating.

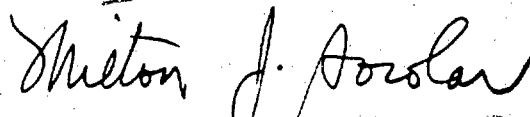
ISI bases its claim on the following: (1) addendum No. 3 requiring a restoration of the 3.6 inches of coating requirement was ambiguous; (2) the pertinent addenda were received only a short time before bid opening; and (3) the contracting officer, by pressuring ISI into an on-the-spot bid verification (less than 3 hours allowed to verify a bid), did not properly carry out his bid verification duties. DOE recommends that ISI's contract be reformed in the amount claimed.

When, as here, a unilateral mistake in bid is alleged after the award of a contract, our Office will grant relief only if the contracting officer was on actual or constructive notice of the error prior to award, and failed to take proper steps to verify the bid. In that situation, no valid and binding contract is consummated by the Government's acceptance. Murphy Brothers, Inc., B-189756, March 8, 1978, 78-1 CPD 182. In determining whether there was a duty to verify bid 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. Philadelphia Corrugated Container Company, B-194662, May 24, 1979, 79-1 CPD 375.

The contracting officer is dead and there are no records in existence to establish the reason that he requested ISI to confirm its price. Consequently, we do not know for certain why he requested ISI to confirm its price. There is no indication in the record that the contracting officer told ISI that he suspected a mistake in its bid. We note that ISI's bid price was almost \$130,000 above the Government estimate and no one has suggested that the estimate was in error.

In view of the fact that the Government estimate was substantially lower than ISI's price, we do not believe that the presumption of error should have been raised in the contracting officer's mind. To the extent that an error might have been suggested by the disparity in bid prices, the contractor was on clear notice through its representative at the bid opening. Thus, the adequacy of the verification request is not relevant.

Based on the above, the claim for reformation of the contract is denied.



For the Comptroller General
of the United States