

DECISION

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

27377

FILE: B-213496

DATE: February 8, 1984

MATTER OF: Prince Construction Co.

DIGEST:

Where low bidder verified its bid but nevertheless admitted the bid was mistaken, and failed to furnish evidence to show that the bid would have been low absent the mistake, the contracting officer's decision not to accept the bid because of his concern about whether the bid actually intended would have been low, was reasonable.

Prince Construction Co. protests the award of a contract for fire protection repairs to New Spectrum Electric, Inc. under invitation for bids (IFB) No. N62477-82-B-0269 issued by the Department of the Navy. Prince objects to the Navy's rejection of its bid on the basis of mistake. The firm alleges that it never claimed mistake and, in any event, that it had verified its price in writing and is therefore entitled to award. We deny the protest.

Bids were opened on September 21, 1983, with the three lowest bids as follows:

Byer Industries, Inc.	\$134,000
Prince Construction Co.	\$185,500
New Spectrum Electric, Inc.	\$201,180
(Government estimate	\$216,100)

Byer Industries was permitted to withdraw after claiming mistake, leaving Prince the apparent low bidder. The contracting officer then requested Prince to verify its bid price. In checking its bid, the firm realized that it had underestimated certain labor and material costs by approximately \$9,500, and then examined the work site to ascertain

027833

B-213496

if it could take the job at the price submitted. Apparently believing that it could do so, Prince verified its bid in writing to the contracting officer 6 days after the request for verification, advising: "We have reviewed our bid . . . and cannot find any apparent error that would warrant withdrawing our bid."

In the course of hand-delivering its written verification, however, Prince indicated in conversation with the contracting officer that it had made an error in a certain portion of its bid. Prince states that it cited the error as approximately \$9,500; the contracting officer asserts that Prince claimed an error of approximately \$10,000. Prince then asked if it could correct the error by submitting its bid estimate papers.

After consultation with agency counsel, the contracting officer informed Prince that since it had claimed mistake, award of the contract would now be possible only if the firm submitted its worksheets along with a statement as to how the mistake occurred and what the intended price was. Prince, however, stated that it wanted the award even if correction were not possible, indicated that it would not furnish the requested evidence, and sought to reverify its bid by mailgram, which was received after the contracting officer rejected the bid and made award to New Spectrum Electric.

Prince protests that this rejection was improper, alleging that it had not claimed mistake--that its conversation with the contracting officer regarding correction was only hypothetical in nature--and, in any event, that it had verified its bid and is therefore entitled to award or, in the alternative, its bid preparation costs. The Navy counters that the contracting officer's action was proper according to Defense Acquisition Regulation (DAR) § 2-406.3 (e)(1) (1976 ed.), which provides that if a bidder alleges mistake, the contracting officer will advise the bidder to make a written request indicating his desire to withdraw or modify the bid, supported by statements concerning the alleged mistake and including all pertinent evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended. The Navy states the contracting officer rejected the bid because absent the requested evidence, he had no way to determine that award to Prince was fair to the other bidders.

Although Prince asserts that it had not actually claimed mistake, it is undisputed that the firm indicated some kind of error in its bid and that it had sought possible avenues for correction. In addition, Prince's bid was 14 percent lower than the government's estimate, a difference that reasonably raises a doubt about the bid, see Iberville Services, Inc.--Reconsideration, B-196543, March 25, 1981, 81-1 CPD 221, and is why verification was requested in the first place. Under these circumstances, we believe it was reasonable for the contracting officer to request Prince's worksheets for consideration under the procurement regulations' mistake correction procedures.

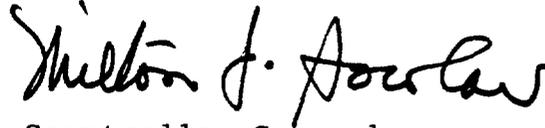
A contracting officer must reject a mistaken bid if it is not clear that the bid would have remained low absent the mistake. H. Martin Construction Co., B-201352, April 8, 1981, 81-1 CPD 268. By failing to submit the requested evidence concerning its bidding error, Prince makes it impossible for the contracting officer to make any supportable determination that Prince would have been the low bidder in any event. In that regard, although the asserted amount of error was \$9,500-\$10,000, the Navy states that the amount was exclusive of profit and overhead, and we note that the difference between Prince's actual bid of \$185,500 and New Spectrum's bid of \$201,180 was only \$15,680. In these circumstances, we do not believe it was unreasonable for the contracting officer to be concerned that Prince's bid would not have been low if the error had not been made, without some substantive evidence to the contrary.

As to Prince's attempt to verify the bid as submitted in order to obtain award, although a verification generally serves to bind a bidder, see General Time Corporation, B-180613, July 5, 1974, 74-2 CPD 9, it is well-established that a bid which is mistaken may not be accepted even if it has been verified. 51 Comp. Gen. 498 (1972). As we have already determined, the contracting officer acted reasonably in concluding that neither Prince's verification nor attempted reverification can serve to negate the admission of mistake already made.

We therefore believe that the contracting officer acted properly in deciding that it would be unfair to other

B-213496

bidders if Prince's bid were to be accepted as submitted.
See 42 Comp. Gen. 723 (1963). The protest is denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States