

DECISION



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

FILE: B-213916.2

DATE: May 25, 1984

MATTER OF: M.G.M. Construction Co.--Reconsideration

DIGEST:

1. Contractor's assertion that at the time it accepted a contract it reserved the right to file a claim for bid correction is not a basis for GAO to consider a postaward mistake in bid claim under grant where the contractor has not submitted documentary evidence to support its reservation of right.
2. Contractor asserting that since federal forums (e.g., Claims Court) are unavailable to contractor under federal grant, initial decision reliance on rules applicable to direct federal procurements was improper does not provide basis for GAO to supply forum for postaward contract adjustment since it is not function of GAO to provide forum for every claims involving federal funds and contractor has access to state court.
3. GAO's consideration of postaward protests against an agency's decision to permit bid correction does not require GAO to consider postaward mistake in bid claims since the two situations are legally different.

M.G.M. Construction Co. (MGM) requests that we reconsider our decision M.G.M. Construction Co., B-213916, February 15, 1984, 84-1 CPD 208. In that decision, we refused to consider MGM's request for an upward price adjustment in its contract with the Central Marin Sanitation Agency (CMSA). The contract was awarded pursuant to an Environmental Protection Agency grant.

In MGM's bid price for schedule "A," it had inserted \$2,400,000 in longhand and \$2,450,000 in numerals. Based on a solicitation provision which stated that the written amount would control where there was a discrepancy between a

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written amount and a numerical amount, CMSA notified MGM that an award could be made to MGM only for \$2,400,000. MGM accepted an award at this amount and requested GAO to grant MGM an upward adjustment in its contract price. We refused to consider MGM's request because it was submitted after MGM accepted the contract.

MGM first alleges that our initial decision did not consider that MGM accepted the award under protest. To support its position that this requires our Office to decide MGM's claim, MGM relies on Chris Berg, Inc. v. United States, 426 F.2d 314 (Ct. Cl. No. 235-68, 1970), and Lockheed Aircraft Corp. v. United States, 426 F.2d 322 (Ct. Cl. No. 46-65, 1970).

These cases do support the proposition that a postaward mistake in bid claim may be considered where the contractor brought the mistake to the attention of the contracting officer before accepting an award and reserved the right to have its claim reviewed at the time it accepted the award. However, they do not support MGM's contention that we must consider its mistake in bid claim. In Chris Berg Inc., at the time of signing the contract, the contractor included a written letter which reserved its right to have its contract price adjusted. In Lockheed Aircraft, the reservation was stated in the contract. See B-161024, July 3, 1967, and B-177281, January 23, 1973. Here, MGM has asserted that it accepted the award under protest and reserved the right to have its request for bid correction reviewed. However, MGM has submitted no evidence to support this statement. Consequently, these decisions do not require us to reverse our initial decision.

MGM next alleges that our initial decision is legally incorrect because, in refusing to consider MGM's postaward request for bid correction, we indirectly relied on the Federal Procurement Regulations which apply to direct federal procurements. MGM states that contractors under direct federal procurements can submit postaward mistake in bid claims to the Board of Contract Appeals or the claims court. MGM reasons that since these forums are not available to contractors which have been awarded contracts under federal grants, we may not rely on legal precedent applicable to direct federal procurements. MGM also alleges that our decision is legally incorrect because it was not applied prospectively.

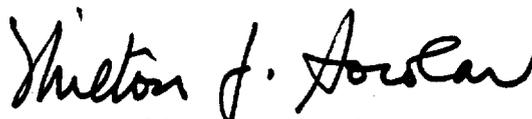
While MGM argues that these bases of its request for reconsideration are legal errors contained in our initial decision, it is not the function of GAO to provide a forum for every claim raised in conjunction with procurements

involving federal funds. We note that MGM may bring its claim in the courts of the state of California. Thus, we are not persuaded that these arguments require us to consider MGM's request for a price adjustment in its contract.

Finally, in its initial request for a price adjustment, MGM relied on Ideker, Inc., B-194293, May 25, 1979, 79-1 CPD 379, and RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140, to support the position that this Office will consider postaward claims. We found that these cases did not support MGM because they concerned postaward protests against an agency's decision to permit a bidder to correct a mistake in its bid. MGM argues that this conclusion is legally incorrect because in protests and mistake in bid claims we must consider the same factors. MGM believes that the only thing distinguishing protests from mistake in bid claims is the firm requesting review.

There is, however, another major factor which distinguishes mistake in bid claims from protests. In protests, such as RAJ Construction, Inc., supra, and Ideker, Inc., supra, we are determining whether an award was made properly. The circumstances in those cases involved the agency permitting a bidder to correct its bid to an amount lower than that amount in the bid as opened and this agency action resulted in the protester being displaced as the low bidder. Thus, there, if the protester is correct, the protester rather than the awardee is entitled to the contract award. Where an awardee requests that we consider its request to have its bid adjusted, however, there is no question whether the award was made to the proper party. Rather, the requester is seeking to have his contract reformed. See B-176780, January 22, 1973. Accordingly, the same considerations are not present and the same procedures need not be followed.

Prior decision is affirmed.

for 
Comptroller General
of the United States