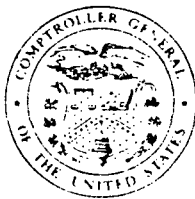


DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-181028

DATE: July 11, 1974

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MATTER OF: Fritz A. Nachant, Inc.
Invitation for Bids No. N62474-74-B-2965**DIGEST:** Contracting officer was not on actual or constructive notice of mistake in bid of low bidder nor was there any duty to seek bid verification where all six bids followed a normal upward progression and four bids were priced below the Government's estimate.

This matter involves a mistake alleged by Fritz A. Nachant, Inc. (Nachant) in its bid under the subject invitation covering the construction of a maintenance building at the Naval Air Station, North Island, San Diego, California.

The requirement was the subject of two solicitations, the first having been canceled because of a mistake in the low bid and the excessive prices of the remaining bids. The readvertised IFB, with some specification changes, was opened March 15, 1974, and award was made on that date to Nachant, the lowest aggregate bidder.

In a telegram dated April 5, 1974, Nachant advised the Navy that its bid was \$30,000 to \$40,000 lower than it should have been. The telegram alleged that a mistake was caused by a faulty subcontractor quotation. The contractor has requested relief by way of rescission of the contract. Nachant has suggested that the Government knew or should have known of the mistake before the bid was accepted for award.


As a general rule, when a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral mistake. Saligman et al. v. United States, 56 F. Supp. 505 (D.C.E.D. PA. 1944). However, our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid. 37 Comp. Gen. 685 (1958) and 17 Comp. Gen. 575 (1938). In determining whether a contracting officer has a duty to verify bid prices we have stated:

"* * * 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' (Welch, Mistakes in Bid 18 Fed. B. J. 75, 83) without making it necessary for the contracting officer to assume the burden of examining every bid for possible error by the bidder. * * *" 49 Comp. Gen. 272, 274 (1969), quoting B-164845, January 27, 1969.

As indicated, Nachant submitted the lowest aggregate bid. There were six aggregate bids received: \$238,000; \$234,100; \$213,481; \$208,145; \$199,000 and \$193,498. The Government's estimate was \$229,000.

While Nachant's bid in this case was approximately 15-1/2 percent below the Government's estimate, the significance of this fact is diminished by the fact that three other bids were also priced below the estimate. Furthermore, the six bids received reflect a normal upward progression in that none was out of line with the next high bid. In these circumstances, it is our opinion that the contracting officer should not have suspected an error in Nachant's bid from a review of the bidding. See B-178402, April 18, 1974.

Accordingly, we must conclude that a valid and binding contract was created by the Government's acceptance of Nachant's bid and rescission may not be granted.


Deputy Comptroller General
of the United States