

DECISION



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

FILE: B-186130

DATE: May 12, 1976 ⁶⁰⁸⁷² 98950

MATTER OF: Alden Construction Company

DIGEST:

Contract awarded with knowledge of possible mistake in bid alleged prior to award may be reformed to reflect upward price adjustment in amount of error since award was made subject to final determination of mistake in bid claim and contractor's evidence leaves no substantial doubt as to existence and nature of mistake and amount of intended bid.

The Veterans Administration (VA) has forwarded for our consideration a claim of mistake in bid submitted by Alden Construction Company (Alden) prior to the award of contract No. V646C-582 under a solicitation issued on May 28, 1975.

The solicitation requested bids for alteration work to patients' bath and shower facilities and the self-care room in Building No. 6 at the Veterans Administration Hospital, Pittsburgh, Pennsylvania. Bids were opened on June 20, 1975, and the lowest bid received was from Alden in the amount of \$36,670. The only other bids received were in the amounts of \$62,300 and \$68,266. The Government estimate for the project was \$28,500.

On June 23, the contracting officer advised Alden of the bid prices received. Since the next low bid was \$62,300, the contracting officer recommended that Alden recheck its workpapers. Subsequently, Alden indicated that there was evidence of a malfunction in its adding machine which might have caused a \$3,000 error in the addition of its costs. However, Alden agreed to accept award of the contract, but indicated that it would review its costs and the suspected malfunction and that if an error was in fact made, it would submit a claim under the appropriate regulations. Award was made to Alden on June 25 subject to such reservation.

B-186130

In connection with its claim, Alden has submitted its original adding machine tape and worksheet. The original tape shows a total amount of \$3,000 less than the actual sum of the amounts listed thereon, whereas the amounts listed and totaled on the worksheet are correct. In view of this evidence, the contracting officer has recommended that the contract price be increased \$3,000 and the VA has concurred in such recommendation.

Generally, acceptance of a bid by the Government with actual or constructive knowledge of an error in the bid does not result in a binding contract. 52 Comp. Gen. 837 (1973); 45 Comp. Gen. 700 (1966). Here, the possibility of a mistake was brought to the attention of the contracting officer prior to award. In such circumstances, we have held that the contract may be subject to reformation so as to reflect the actual intent of the parties. 49 Comp. Gen. 446 (1970). Where there is notice of an alleged error prior to award, there are basically three conditions which must be satisfied for reformation to be proper: (1) award of the contract must have been subject to reservation by the contractor of the right to seek an adjustment in the contract price on the basis of the alleged error; (2) the contractor must be able to show by clear and convincing evidence the existence and nature of the mistake and (3) the amount of the intended bid. We have denied reformation where one or more of those conditions are lacking. See Sherkade Construction Corp., B-180681, October 30, 1974, 74-2 CPD 231; B-162543, November 27, 1967. Conversely, reformation has been granted where all three requirements have been met. See Pittsfield Construction, Inc., B-184753, September 25, 1975, 75-2 CPD 190; Robert E. McKee, Inc., B-181872, November 5, 1974, 74-2 CPD 237.

We think that Alden has satisfied the prerequisites for reformation in this case. As noted above, award of the contract was made subject to the submission and final determination of Alden's claim of mistake, and we find that the evidence submitted by the contractor in support of its claim leaves no substantial doubt as to either the nature of the error or the actual bid intended.

B-186130

Accordingly, Alden's contract may be reformed to reflect an upward price adjustment in the amount of \$3,000 as administratively recommended.

Deputy

Robert A. ...
Comptroller General
of the United States