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DECISION



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

FILE: B-187512

DATE: October 19, 1976

MATTER OF: Law Brothers Contracting Corporation

DIGEST:

Contractor alleging mistake in bid after award is not entitled to relief where contracting officer had no actual or constructive notice of mistake prior to award.

On the basis of a mistake in bid alleged after award, Law Brothers Contracting Corporation (Law) requests modification of its contract awarded under invitation for bids (IFB) No. DACA51-76-B-0063 issued by the Army Corps of Engineers (Army).

The IFB solicited bids for the construction of range improvements at Fort Drum, Watertown, New York. The price schedule included three schedules: Schedule I, improvements to a rifle range; Schedule II, improvements to a grenade launcher range; and Schedule III, all work covered by Schedules I and II. The work covered by Schedule I included, among other things, the construction of a new target storage building. An identical target storage building was also included in the work covered by Schedule II. Bids were opened on June 9, 1976, and the Army received six responsive bids, which compared to the Government Estimate as follows:

	Schedule I	Schedule II	Schedule III
Law Brothers	\$42,000	\$51,600	\$ 93,500
Ballard Construction	53,000	85,000	128,000
Redwood Contractor	60,620	45,110	101,840
JVL Construction	64,208	72,015	135,000
R. A. Gottlieb	113,790	182,465	296,255
Henry General Contracting	116,341	99,773	216,114
Government Estimate	60,473	63,665	124,138

Since it appeared that a saving of \$6,390 would result from making separate awards to the respective low bidders for Schedule I and Schedule II, rather than making award to the low bidder for Schedule III, awards were made on June 28, 1976, to Law for Schedule I, and to Redwood for Schedule II.

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On July 26, 1976, Law called the Army and stated that it had made a mistake in its bid for Schedule I. Law stated that it had included the costs for the target storage building under Schedule II but had overlooked the requirement for the same kind of building under Schedule I. In its letter to the Army of July 26, 1976, Law requested that either the contract be canceled or that it be reformed to provide for a \$9,267 increase in price.

In a letter of July 30, 1976, Law asserted that there was a "mutual mistake" by it and the Army in that both failed to suspect an error in its bid. Law alleged that the contracting officer should have suspected a mistake and requested confirmation of its bid price because of the discrepancy between its bid price and the other bids on Schedule I as well as the Government Estimate. Law also notes that its bid was "unbalanced" as a result of the error. Its bid for Item I, from which the building allegedly was omitted, differed from the Government Estimate to a greater extent than its bid for Item II. In response to an inquiry from the Army as to why the amount of the correction requested was less than the \$9,707 which Law had included in his Schedule II bid for the target storage building, Law explained that it had included an item of reinforcing steel for the storage building in its worksheets but had mistakenly omitted that cost item in his computation of his intended bid that was contained in his letter of July 26. Law indicated that its original bid would have been higher by \$9,707 instead of \$9,267.

We do not believe this case presents any question of mutual mistake. The error made by Law in omitting the cost of the target storage building was unilateral. Our Office has held that if the IFB clearly states the Government's needs, responsibility for bid preparation lies with the bidder. We have not granted relief from an award of contract, whether by reformation or rescission, where a bidder has made a unilateral mistake unless the contracting officer knew or had reason to know of the mistake prior to award. L. E. B., Inc., B-186797, July 23, 1976, 76-2 CPD 77. There is no evidence in the record to indicate that the contracting officer accepted Law's bid with actual knowledge of error. Consequently, Law can only receive relief if the record shows that the contracting officer had constructive notice of the possibility of an error in Law's bid.


Constructive notice is said to exist when the contracting officer, considering all the facts and circumstances of a case,

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should have been aware of the possibility of an error in bid. Lanham Construction Company, B-185702, February 10, 1976, 76-1 CPD 87. We cannot agree that the fact that Law's bids for Items I and II were "unbalanced" should have put the contracting officer on notice because a similar lack of uniformity was present in other bids. In some bids the amounts for Schedule I were more than the respective amounts for Schedule II, and in the others, the reverse was true. Also we have held that a contracting officer cannot be charged with constructive knowledge of a mistake in circumstances where a bid is part of a reasonable progression of bids. 39 Comp. Gen. 405 (1959); A. C. Ball Company, B-178402, April 18, 1974, 74-1 CPD 202. In the instant case, the increasing progression of the other bids was not erratic or unreasonable in relation to the low bid of Law especially in view of the strong competition in the construction industry for the Government business.

Law may well have made a mistake in arriving at its bid price, but the record shows that there was no reason for the contracting officer to believe that Law's low bid, regular on its face, reflected that mistake. Consequently, we cannot conclude that the contracting officer was on constructive notice of the likelihood of error, which would have required verification of Law's bid. The acceptance of the bid, therefore, consummated a valid contract which fixed the rights and liabilities of the parties.

Accordingly, Law's claim for relief is denied.

Acting  Comptroller General
of the United States