

*a Z Lehman  
Proc II*

**DECISION**



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

00200

FILE: B-187922

DATE: December 22, 1976

MATTER OF: Paul E. Lehman, Inc.

**DIGEST:**

Where bidder's worksheets establish nature of mistake and amount of intended bid, contract awarded subject to reservation of contractor's right to have contract reformed on basis of mistake in bid may be reformed to reflect bid actually intended, but may not be reformed with respect to items which contractor's evidence of claimed mistake is not clear and convincing.

Paul E. Lehman, Inc. (Lehman) requests reformation of Department of Agriculture, Forest Service contract No. 01-2999, for the construction of Summit Lake Recreation area road No. 399, Monongahela National Forest. The basis for its request may be stated as follows:

Invitation for bid R9-76-27 was issued on May 8, 1976, and five bids were received on June 18, 1976, as follows:

Hammond-Mitchell Inc.	\$ 394,263.15
F.E. Lehman, Inc.	319,897.15
W.A. Ryder	469,532.30
K.M. Dunn	560,524.35
E.R. Totzen	541,792.50

The Government estimate for the project was \$347,252.79.

Because of the disparity between Lehman's bid price and the other bid prices, the contracting officer requested Lehman to review and confirm its bid. By letters dated June 25 and June 28, 1976, respectively, Lehman asserted errors totalling \$10,472.00. Lehman stated that the errors occurred as a result of its using an incorrect acreage figure under item 634 (campground parking spurs) and omitting the cost of loading, hauling

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and burying tree stumps under items 201(04) and 634. Lehman submitted copies of its estimate sheets to substantiate its claim of error.

Lehman did not request withdrawal of its bid and on July 28, 1976, agreed to accept the award of the contract at the price bid, subject to the reservation of a right to seek correction of the asserted errors in items 201(04) and 634. By letter dated July 1, 1976, the contracting officer accepted the bid, stating in pertinent part that:

"Your offer of \$319,897.15 in response to solicitation No. R9-76-37 is accepted as made, subject to final determination of claimed mistake in bid."

The Forest Service subsequently referred the matter to this Office along with the contracting officer's recommendation that correction not be allowed since the evidence submitted does not establish the existence of a mistake in bid.

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 23, 1975, 75-2 CPD 190; Robert E. McKee, Inc., B-181872, November 5, 1974, 74-2 CPD 237.

Lehman's worksheets under item 201(04) show a total per acre estimate (including overhead and profit) of \$1,428.00. The contractor estimated 6 acres to be cleared for the roadway and


one acre for the borrow area, for a total estimate of \$9,996.00 (7 acres x \$1,428) which he rounded to \$10,000 for the lump sum bid for that item. The estimate sheet includes notations for burying the stumps at the borrow area and for cutting and selling the logs. Neither notation carries a price and no apparent mention is made of the cost of hauling and burying of the stumps, or a credit for the logs to be sold. Thus, we are unable to determine whether Lehman intended to include a cost for hauling and burying or what that cost was, or whether he intended to credit the estimate with the value of the wood to be sold. Since the estimate was prepared for the purpose of formulating a competitive bid, it is conceivable that one item was intended to balance the other. Similarly, there is no indication in the worksheets that Lehman intended to include a cost for hauling and burying under item 634. Therefore, we must conclude that the contractor has not been able to show by clear and convincing evidence either the nature of the mistake or the amount of the intended bid, so that he has not satisfied the prerequisites for reformation with regard to the claimed error for loading, hauling and burying of the stumps under items 201(04) and 634.

On the other hand, a review of Lehman's estimate sheet for item 634 clearly shows the precise nature of the error. Lehman utilized a figure of .51 acres @ \$1,200 per acre for the clearing and grubbing requirement, while the construction drawings show 1.71 acres for campground "A" spurs and .51 acres for campground "B" spurs. In his June 28 letter to the contracting officer, Lehman stated that:

"I had the correct quantity for all items except clearing and grubbing in the campground spurs/ where I inadvertently used only the total B group."

The worksheets support this statement, and therefore we find that the evidence submitted to substantiate the claim of error leaves no doubt as to the nature of the error or the actual bid intended.

Accordingly, the contract may be reformed in the amount of \$2,052.00 (1.71 acres @ \$1,200 per acre) for the clearing and grubbing of the campground spurs.

  
Deputy Comptroller General  
of the United States