

**DOCUMENT RESUME**

**02063 - [A1112104]**

[Contract May Be Reformed for Price]. B-188374. April 18, 1977.  
4 pp.

Decision re: William H. Young & Co.; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: Coast Guard.

Authority: P.P.R. 1-2.406-1. P.P.R. 1-2.406-4(c). 45 Comp. Gen.  
305. 45 Comp. Gen. 307. B-182895 (1975). B-180613 (1974).  
B-185340 (1976). B-180573 (1974). B-181439 (1974).

Contractor requested that contract for dredging boat  
basin be reformed. At the time of award, agency had doubts that  
contract could be performed at bid price. Relief may be granted  
where a mistake in bid was so gross as to be patently unfair to  
offeror. Contract may be reformed to reflect the intended price,  
not to exceed the next low acceptable bid. (DJH)

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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20540

Kleman  
Proc I

FILE: B-188374

DATE: April 18, 1977

MATTER OF: William M. Young & Company

DIGEST:

Generally, recovery for mistake in bid is precluded where prior to award contracting officer obtains from bidder proper verification of bid. However, given gross disparity here between awardee's bid and both next low bid and Government estimate, plus acknowledged doubt on part of contracting official that work could be performed at bid price or any other satisfactory explanation for such price, contract may be reformed to reflect intended price, not to exceed next low acceptable bid.

On June 2, 1976, the United States Coast Guard (Coast Guard) issued invitation for bids (IFB) 03-6860-76 for the dredging of the boat basin at the Coast Guard Station located at Sandy Hook, New Jersey. The original bid opening date was scheduled for June 24, 1976. However, by amendment number one to the IFB, dated June 21, 1976, the bid opening date was extended to July 16, 1976, and prospective bidders were advised that the IFB would be revised and an amendment issued under separate cover. By amendment number two to the IFB, dated June 25, 1976, prospective bidders were furnished a revised drawing. The revised drawing increased both the horizontal and vertical area to be dredged. The estimated quantity to be dredged under the original drawing was 3,500 cubic yards, whereas under the revised drawing, the estimated quantity was 6,500 cubic yards. Moreover, amendment number two also advised prospective bidders that the Government's cost estimate had increased from the \$10,000 to \$25,000 range to the \$25,000 to \$100,000 range. The actual Government cost estimate was \$15,600 for the original project and \$28,275 for the project as revised.

Bids were opened on July 16, 1976, with the following results:

1. William M. Young & Company	\$17,222.00
2. John F. McGreevey & Company	36,225.00
3. James Baldwin & Sons	41,650.00
4. James A. Rudolph	74,365.00

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Since the bid submitted by William N. Young & Company (Young) was substantially less than the next low bid and the Government's estimate, the Coast Guard advised Young of the disparity between its bid and the Government's estimate and other bids. The Coast Guard also asked Young to review its bid and confirm its correctness in writing. By letter dated August 3, 1976, Young verified its bid. We have learned from the Coast Guard that even after Young verified its bid, there was some doubt in the mind of the cognizant Coast Guard contracting official that Young could perform the contract at its bid price.

The Coast Guard issued Young a notice of award and a notice to proceed. After receipt of the notice of award, Young notified the Coast Guard that it had never seen the revised drawing, and it had no intention of performing the contract. However, as the Coast Guard correctly points out, Young signed and returned both amendments with its bid.

Counsel for Young was advised that a valid contract existed between his client and the Coast Guard and failure by his client to commence work would result in a termination for default.

Young began work on August 30, 1976. The contract was satisfactorily completed on December 2, 1976.

Young now requests that the contract be reformed. In support of its request, Young submitted worksheets showing its computations for the original project and the project as revised by amendment number two. These worksheets were prepared after award. The original worksheets used in bid preparation were allegedly destroyed.

The Coast Guard recommends that Young's request for reformation of the contract be denied. According to the Coast Guard, the contracting officer, in accordance with Federal Procurement Regulations (FPR) § 1-2.406-1 (1964), requested Young to verify its bid. Moreover, FPR § 1-2.406-4(c) (1964) states that relief cannot be granted unless a mistake in bid is mutual or so apparent as to put the contracting officer on notice of possible error. There is no evidence of a mutual mistake. In fact, the contracting officer requested Young to verify its bid because the disparity in prices suggested the possibility that Young had made a unilateral mistake. Lastly, Young does not have its original worksheets to support its alleged mistake in bid.

The general rule applicable to a mistake in bid alleged after award has been stated as follows:

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"\* \* \* the sole responsibility for preparation of a bid rests with the bidder, and where a bidder makes a mistake in bid, it must bear the consequences of its mistake unless the mistake is mutual or the contracting officer was on actual or constructive notice of error prior to award. See Autoclave Engineers, Inc., B-182895, May 29, 1973, 75-1 CPD 325. When, as in this case, a bidder is requested to and does verify its bid, the subsequent acceptance of the bid consummates a valid and binding contract. However, proper verification requires that in addition to requesting confirmation of the bid price, the contracting officer must apprise the bidder of the mistake which is suspected and the basis for such suspicion. General Tire Corporation, B-180613, July 5, 1974, 74-2 CPD 9; Federal Procurement Regulations § 1-2.406-1 (1964 ed. circ. 1)."

Noise Cascade Envelope Division, B-185340, February 10, 1976, 76-1 CPD 86.

However, it has also been held that notwithstanding proper verification prior to award, relief may be granted where a mistake in bid was so gross that it could be said the Government "was obviously getting something for nothing." 45 Comp. Gen. 305, 307 (1965) citing Kemp v. United States, 38 F. Supp. 568 (1941). Therefore, where the contracting officer concludes that the apparent discrepancy has not been satisfactorily explained by the bidder, it is incumbent upon him to obtain such an explanation or to consider whether the bidder sufficiently understands the scope and nature of the work to be found responsible. Yankee Engineering Co., Inc., B-180573, June 19, 1974, 74-1 CPD 333. Absent an explanation reasonably satisfactory to the contracting officer, the contractor is not precluded from recovery by the verification if after award he alleges and is able to prove error. Yankee, supra. However, such recovery is precluded where the contracting officer prior to award obtains from the bidder an explanation for the apparent discrepancy, which the contracting officer reasonably accepts, even if reliance on the explanation should ultimately prove misplaced. Aerospace America, Inc., B-181439, July 16, 1974, 74-2 CPD 33, reconsidered May 27, 1975, 75-1 CPD 313.

In light of the foregoing, and given the gross disparity between Young's bid and both the next low bid and the Government estimate plus the acknowledged doubt on the part of the contracting official that the work could be performed at the bid price or any other satisfactory

explanation for such price, we conclude that the contract may be reformed to reflect the intended price, not to exceed the next low acceptable bid. Since the available evidence indicates that but for the error Young's bid would have been \$34,856, which would still be low, the contract should be reformed to reflect that figure.

*R. K. J. Jr.*  
Deputy Comptroller General  
of the United States