

DOCUMENT RESUME

02729 - [A1872914]

[Costing Error in Bid Allows Contract to Be Reformed]. B-188510.
June 30, 1977. 3 pp.

Decision re: Terminix, Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Jaybil Industries, Inc.

Authority: B-179956 (1974). B-184780 (1975). B-186797 (1976).
B-185201 (1976). B-185200 (1976). B-185705 (1976). B-185461
(1976). B-164865 (1958).

After receiving a contract award, the contractor advised the contracting officer that the price bid had been entered erroneously by a typist in the 3-year performance column rather than the intended 1-year column. The 36% price differential between bids and the fact that the awardee had increased its bid for the contract each year should have alerted the contracting officer to the possibility of an error in price. The contract may be reformed for 1-year performance. (DJM)

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DECISION



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

*P.L.I
Carter.*

FILE: B-188510

DATE: June 30, 1977

MATTER OF: Terminix, Inc.

DIGEST:

Contract for services may be reformed to require performance for 1 year in lieu of 3 years on basis of mistake in bid alleged after award where 36-percent price differential between bids in combination with other factors should have placed contracting officer on notice of possibility of error and verification should have been requested.

The Veterans Administration (VA) has requested our decision concerning a mistake in bid alleged after award by Terminix, Inc. (Terminix). The VA Hospital at Little Rock, Arkansas, issued an invitation for bids (IFB) for performance of work described as rodent and pest control services for the period October 1, 1976, through September 30, 1977, or alternatively through September 30, 1979.

The IFB provided for the entry of two bids by prospective contractors, the first stating the per month cost on the basis of a 1-year contract term, and the second stating the per month cost on the basis of a 3-year contract term. Terminix bid \$729 per month for both the 1-year and 3-year contracts; the only other bidder offered to perform for \$1,149 per month for both the 1- and 3-year contracts. Terminix was ascertained to be the low responsive bidder and was notified of award of contract No. V598F-882 for a 3-year term by letter dated August 27, 1976. On August 31, 1976, the president of Terminix contacted the contracting officer and advised her that Terminix had not intended to bid for the 3-year period. In a letter to the contracting officer dated September 2, 1976, it was explained that a clerical error was made by an office typist entering an amount in the 3-year column, and "to make matters worse, she copied the amount of \$729 from our copy of the 1975 solicitation rather than inserting the correct price of \$809." The president of Terminix states that, having made the careless error, it is willing to absorb the loss for 1 year, but requests that the period of performance be reduced to 1 year.

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We note in this regard that in explanation of the error, the president of Terminix states that it has bid on this contract every year for more than a dozen years and never before has a 3-year term been mentioned. The contractor also notes that its bid has been progressively increased each year: 1971 - \$510; 1972 - \$580; 1973 - \$610; 1974 - \$680; and 1975 - \$729. In her statement, the contracting officer verifies that previous solicitations have been for 1-year periods and confirms the upward progression of Terminix's bids since 1974. The contracting officer states that "it appears that the Contracting Officer should have been on notice of constructive error in bid, as the accepted bid was 36% less than the total of the other bid submitted." The administrative office recommends that the contract be reformed to require performance for only 1 year at the contract price.

Generally, the responsibility for bid preparation lies with the bidder. B-164865, July 31, 1968. This Office has not granted relief from an award of contract, either by reformation or rescission/cancellation, where a bidder has made a unilateral mistake in bid unless the contracting officer knew, or had reason to know, of the mistake prior to award. Roger C. Mortensen, B-179956, February 21, 1974, 74-1 CPD 88; Stainless Steel Piping Supply Company, B-184780, December 23, 1975, 75-2 CPD 407. The contracting officer will generally be charged with constructive notice of a mistake when the bid price deviates significantly from other bids received or from the Government estimate.

Price disparities ranging from 5 to 38 percent have been held by our Office to be insufficient, by themselves, to charge the contracting officer with constructive notice of a mistake in bid. See Veterans Administration Request for Decision Concerning a Mistake in Bid Alleged by L.E.B., Inc., B-186797, July 23, 1976, 76-2 CPD 77. Such disparities, however, when observed in combination with other apparent irregularities such as inconsistency in price between the current and prior procurements, may form the basis for a finding of constructive notice of mistake. See Charles and Son Window Cleaning Co., B-185201, January 2, 1976, 76-1 CPD 9; General Electric Company, B-185200, January 12, 1976, 76-1 CPD 19; Montgomery Elevator Company, B-185705, May 13, 1976, 76-1 CPD 323.


We have held that no valid and binding contract is consummated when the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid.

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Charles and Son Window Cleaning Co., supra; B & B Adcrafters, Inc., B-185461, January 14, 1976, 76-1 CPD 28. We have authorized reformation in such circumstances. General Electric Company, supra.

In this case, we do not necessarily agree with the contracting officer's statement that she should have been aware of the possibility of error in Terminix's bid solely on the basis of the price differential between the bids. However, we are of the opinion that this factor in combination with the unlikely prospect that in an inflationary economy Terminix would be willing to obligate itself to perform for 3 succeeding years at the price bid on the prior year's procurement, particularly in view of Terminix's history of progressively increasing bids, should reasonably have placed the contracting officer on notice of the possibility of error and that verification should have been requested.

Accordingly, the contract may be reformed as administratively recommended.


Deputy Comptroller General
of the United States