

643

W.D. Hasfurther

PL I

**DECISION**



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

FILE: B-190623

DATE: April 25, 1978

MATTER OF: J. D. Shake Construction Co. Inc.

**DIGEST:**

1. Where bidder verifies correctness of bid price after contracting activity advised bidder of reason for suspecting error (disparities among prices bid) and requested review and verification of price, subsequently awarded contract is valid and binding and postaward allegation of error does not affect validity of contract.
2. Even if contracting officer did not mention suspicion of mistake in bid, bidder was on notice of suspected mistake where bidder knew of discrepancies between bid prices submitted and was requested to verify bid price.
3. Where low bid price upon which award was made is approximately 25 percent below next low bid price and just below Government estimate, resulting contract is not unconscionable.

The Louisville District, Corps of Engineers, received four bids in the lump-sum amounts of \$89,990, \$124,173, \$225,000, and \$239,512.95 under invitation for bids No. DACW27-77-B-0076 for the removal of sunken barges and dry dock on certain portions of the Kentucky River. The Government estimate for the work was \$93,894. Because of the disparities among the prices bid, the president of the low bidder, J.D. Shake Construction Co. Inc. (Shake), was requested at the September 27, 1977, bid opening to review and verify in writing its bid price. By letter of September 28, Shake confirmed its price, and on September 30 the contract was awarded to Shake.

B-190623

On October 14, Shake alleged that it had made a mistake in bid and requested that it be allowed to withdraw the bid. Subsequently, Shake submitted workpapers, an affidavit, and a September 20 letter containing a subcontractor's quotation of \$72,940 for a portion of the work. Shake contends that it forgot to include the \$72,940 amount and, consequently, that its bid price should have been \$162,930.

From this material, personnel of the contracting activity concluded that (apart from the subcontractor's letter containing the \$72,940 figure) it was impossible to prove or disprove the allegation of error since no indication was given in the workpapers of how and precisely why the original money figures were reached. The computations in the workpapers were very broad and lacking in detail. Further, it was noted that the quotation submitted by the subcontractor was for a more extensive and expensive operation than was contemplated in the Government estimate and that in view of the long experience of Shake in the salvage business the making of an error of this magnitude was questionable. Consequently, the Shake request was denied by the contracting activity, and that firm now requests from our Office the relief denied it.

As a general rule, in order for a bidder to obtain relief on the basis of an allegation of a mistake in bid after award, the mistake must have been mutual or the contracting officer must have been on actual or constructive notice of the occurrence of the mistake prior to award. However, where the bidder alleging the mistake has been adequately advised of all the known facts which suggest the possible occurrence of a mistake and verifies that the original price is correct, the subsequent acceptance of the bid by the Government creates a valid and binding contract which will not be disturbed by a later allegation of error. Peterman, Windham & Yaughn, Inc., 56 Comp. Gen. 239 (1977), 77-1 CPD 20.

In view of the facts that the only reason for suspecting any possible bid computation error was the discrepancies between the bid prices received (of which Shake knew) and that Shake verified its submitted price as being correct, we believe that the contract entered into between the Government and Shake is valid and binding. Shake contends that it understood the verification concerned whether the bid price was correctly

B-190623

submitted rather than correctly computed. We believe that even if the contracting officer did not state specifically--as this contention implies--that he suspected a possible mistake in bid, the bidder was on notice that a mistake was suspected because of the need to verify the correctness of its bid price after being made aware of the discrepancies between the bid prices submitted. Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393.

The only other basis for relieving Shake of its obligations under the contract would be if enforcement of the contract would be unconscionable. We do not believe that enforcement would be unconscionable. In addition to the fact that the Government estimate indicates that the original Shake bid was reasonable, the difference between the Shake bid and the next low bid was only about 25 percent. This does not constitute grounds for finding the resultant contract to be unconscionable. Walter Motor Truck Company, B-185385, April 22, 1976, 76-1 CPD 272.

Accordingly, our Office is unable to provide Shake with the relief that it requests.

Deputy

*R. F. K. 11/11/76*  
Comptroller General  
of the United States