

Proc II

DECISION



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

10,938

FILE: B-192752

DATE: August 6, 1979

MATTER OF: Contra Costa Electric, Inc.--
Reconsideration; Carl W. Olson
and Sons Co.

DLG 02491
DLG 02492

DIGEST:

1. [Request for increase in price of contract awarded by Federal grantee because of alleged mistake in bid by subcontractor] is denied where record shows contractor accepted award without reservation after grantee had been placed on notice of mistake claim, so that legally binding contract resulted.
2. Claimants' request for informal conference in connection with request for post-award mistake in bid claim under contract awarded by Federal grantee is denied since conference would serve no useful purpose in light of record which shows claimants are not entitled to relief as a matter of law.

Contra Costa Electric, Inc. (Contra Costa) and Carl W. Olson and Sons Co. (Olson) request reconsideration of our decision, Contra Costa Electric, Inc., B-192752, September 27, 1978, 78-2 CPD 239, in which we declined to review Contra Costa's request for correction of a mistake in its bid submitted to a prime contractor for electrical subcontract work under a contract funded by Federal grant. It has been our practice not to review matters involving the award of subcontracts by a prime contractor to a Federal grantee.

In declining to consider Contra Costa's request for bid correction, we noted that a mistake in bid claim had not been filed with this Office by the prime contractor. Nevertheless, on the record before us, we observed that the prime contractor apparently accepted award of the contract at its original price without complaint or reservation.

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Contra Costa now requests reconsideration of that decision on the ground that the request to GAO for relief "was made with the consent and approval of and in cooperation with the prime contractor," and that the request was "through and for the benefit of the prime contractor" and should be considered "as at its request." In addition, Olson argues that it was never advised that it could reserve its right to assert bid mistake and obtain correction after award and that prior to award the grantee did not seek verification or otherwise deal with Olson's request for bid correction.

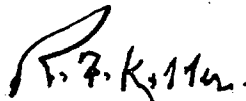
The record before us, both in our prior decision and now, discloses that, prior to award, Contra Costa discovered it had made a mathematical error in its bid to Olson for the electrical work. Contra Costa promptly brought this to the attention of Olson and the grantee. Olson also brought the error to the attention of the grantee's contract awarding officials prior to award. Subsequently, however, the grantee awarded the contract to Olson, which accepted the contract at its original price without complaint or reservation of any right to obtain correction.

We do review the propriety of prime contract awards made by a Federal grantee. See 40 Fed. Reg. 42406; Lametti & Sons, Inc., 55 Comp. Gen. 413 (1975), 75-2 CPD 265. Since Olson has joined Contra Costa in its reconsideration request, we now have before us a mistake in bid claim by a grantee's prime contractor. The record, however, indicates that Olson is not entitled to any relief. A contractor may be held to have agreed to absorb an error by accepting award at a mistaken bid price without reservation. Massman v. United States, 102 Ct. Cl. 699, ✓ 60 F. Supp. 635, cert. denied, 325 U.S. 866 (1945) and 39 Comp. Gen. 405 (1959). Here Olson accepted the award without reservation. Although Olson may not have been informed of its rights to make such a reservation, we are not aware of any requirement that it be so informed. Consequently, Olson and therefore Contra Costa are not entitled to relief from the grantee.

We reach this conclusion without honoring Contra Costa's and Olson's request for an informal conference.

"in order to effectively reconstruct the circumstances under which the bid of Carl W. Olson and Sons was submitted." We believe such a conference would serve no useful purpose since the parties' agreement that Olson ultimately accepted the award at a mistaken bid price without reservation is legally dispositive of the matter. See The Volpe Construction Co., Inc.--Reconsideration, B-189280, August 8, 1977, 77-2 CPd 93.

The complaint is denied.



Acting Comptroller General
of the United States