

Proc A

**DECISION**



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

10,676

FILE: B-193396

DATE: July 9, 1979

MATTER OF: Handy Tool & Manufacturing Co., Inc.

DLG 02064

[Request for Contract Rescission]  
DIGEST:

Even if bid of large business is disregarded in looking at disparity among bids received under small business set-aside, circumstances were not such as to place contracting officer on constructive notice of the probability of mistake. Therefore, contract may not be rescinded on basis of mistake in bid alleged after award.

Handy Tool & Manufacturing Co., Inc. (Handy) has requested rescission of a contract on the basis of a mistake in bid alleged after award. For the reasons stated below we believe the contract may not be rescinded.

Defense Logistics Agency

Invitation for bids (IFB) No. DLA 700-77-B-1288 (totally set aside for small business concerns) was issued August 18, 1977, for 1200 spur gears. The gears were described by six drawings listed in the IFB Schedule, but not physically attached to the solicitation. Handy's bid was the lowest received. Handy was not requested by the contracting officer to confirm its bid and on October 31, 1977, it was awarded contract No. DLA 700-78-C-0253. First delivery of the spur gears was to be by April 29, 1978.

By letter dated April 28, 1978, six months after award and one day before the first scheduled delivery, Handy contacted the agency alleging a mistake in bid. Handy stated that it did not have enough time to obtain the drawings prior to the bid opening date, so it bid in ignorance of them. Upon receipt of the drawings after award, Handy said, it "discovered many close tolerances and that the gears required 100 percent functional testing." Handy's alleged mistake was that it elected to bid before seeing the drawings, which described an item more difficult and expensive to manufacture than Handy anticipated.

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Handy argues that the contracting officer should have been on notice of the probability of error, and therefore should have requested Handy to verify its bid, in view of the following circumstances: (1) the drawings incorporated by reference in the IFB Schedule describe a much more sophisticated item than appears from the face of the solicitation; (2) the item is available only from the second low bidder, a large business, making suspect any lower bid from a small business such as Handy; and (3) there were material discrepancies between the amount of Handy's bid and those of other bidders, as well as prior bids for this item. *Handy's bid, in*

DLA denied Handy's request for relief, finding that the information reasonably available to the contracting officer did not place her on constructive notice of error. It is this decision which Handy has asked us to review. DLA has terminated Handy's contract for default while the matter has been before our Office.

We believe the record supports the agency's denial of relief. Contrary to Handy's argument, we see nothing in the IFB Schedule which would increase the likelihood of bidder error. The Schedule set forth the item's part number and, following a four-line item description, provided the item must be in accordance with six specifically identified drawings. The drawings were not included with the IFB but could be obtained by bidders on request. There does not appear to be any conflict between the drawings and the item description in the IFB Schedule; rather, the drawings expand upon the general description by spelling out precise dimensional and other requirements.

The placing of detailed specification requirements in separate drawings incorporated by reference is a commonly used technique. We do not believe it created any unusual risk of bidder error.

Handy also argues that the gears are only available from one manufacturer, Dana Corporation, a large business, which should have cast doubt upon any lower bid from a

small business concern, such as Handy. However, of the eight bidders on this solicitation (including Dana) only one, Transportation Parts of New York, represented itself to be a dealer rather than a manufacturer of the item. Past procurements of the item have included firms other than Dana. We do not believe Handy has established that the items are available only from Dana.

Finally, Handy argues that discrepancies in the bid prices should have alerted the contracting officer to the probability of error.

When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake was mutual--which is not the case here--or if the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the bid. Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965).

The test for constructive notice is one of reasonableness; whether under the facts and circumstances of the particular case there are factors which should have raised the presumption of error in the mind of the contracting officer. 53 Comp. Gen. 30 (1973); United Sound, Inc., B-187273, January 19, 1978, 78-1 CPD 50. Generally, a contracting officer has no reason to suspect error where a low bid is in line with other bids received and with the Government estimate. Paul Holm Company, Inc., B-193911, May 2, 1979, 79-1 CPD 306.

At the time between bid opening and award, the contracting officer had only a "trailer sheet" which gave the prior history for this item's procurement as well as the Government's estimated unit price. The Government's estimated price was shown as \$34.74 while prior prices ranged from a low of \$20.00 to a high of \$37.70. We have been advised that in response to the prior year's solicitation for this item, Handy

submitted the third low bid of \$40.00: the lowest bid was \$32.03, and the second low was \$35.44. (Handy has chosen not to explain whether it consulted the drawings for this item before bidding \$40.00 the previous year, or how it arrived at its price for the current contract.)

Under the present IFB, the following bids were received:

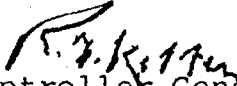
<u>Bidder</u>	<u>Unit Price</u>
Handy	\$31.80
Dana Corp.	36.77
Transportation Parts	42.44
Napco Industries	55.65
Arjay Machine Co.	64.00
Arbee Corporation	80.93
Jo-Bar Mfg. Corp.	82.10
Bachan Aerospace Corp.	128.90

Handy's bid, therefore, was within the range of recent years' contracts for this item, where unit prices fluctuated between \$20.00 and \$37.70. The bid was 8.5 percent below the Government estimate (\$34.74) and 10.2 percent less than the most recent contract price (\$35.44). However, that contract was for one-third the quantity involved here. Looking at the other bids received, Handy's bid was 13.5 percent below Dana's second low bid and 33.4 percent below Transportation Parts' third low bid.

Since Dana is a large business ineligible for award under this procurement, we have serious reservations as to whether its bid should have been considered by the contracting officer in looking at the disparity in prices. Even if Dana's bid is

disregarded, however, we do not believe the circumstances of this procurement were such that the contracting officer should have been placed on notice of the probability of error. Handy's bid price was within the range of past prices for this item, it was less than 10 percent below the Government estimate and about 10 percent below the most recent price paid for a smaller quantity of the item. Although Handy's bid was approximately one-third less than that of the next low small business concern, we do not think that is dispositive in view of all the information before the contracting officer which suggests that Handy reduced its price to be more competitive.

Since the bid was accepted by the Government in good faith and without notice of a mistake, either actual or constructive, a valid and binding contract resulted. Thus, there is no legal basis for granting the relief requested.

  
Deputy Comptroller General  
of the United States