

**DECISION**



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

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Has further  
21801*

*118360*

FILE: B-194610.3

DATE: May 10, 1982

MATTER OF: Andy Electric Company--Reconsideration

**DIGEST:**

Request for reconsideration is denied where protester presents neither evidence demonstrating any error of fact or law in prior decisions nor substantive information not previously considered.

The Andy Electric Company (Andy) requests that we reconsider our decision in Andy Electric Company--Reconsideration, B-194610.2, August 10, 1981, 81-2 CPD 111, where in we affirmed our original decision in Andy Electric Company, 59 Comp. Gen. 363 (1980), 80-1 CPE 242. We reaffirm our findings in both decisions.

These decisions involve Andy's claim for an upward adjustment of its contract price because of a mistake in bid discovered after award. We have twice denied the claim because we found the contracting officer properly performed his verification duty in advising Andy of the discrepancy between Andy's bid and both the Government estimate and the other bids.

On reconsideration, Andy maintains that the contracting agency and the contracting officer acted irresponsibly and negligently in (1) approving the initial Government cost estimate, which did not include the costs for certain items and (2) in not increasing the initial estimate after the issuance of amendment No. 0001 to allow for the increased costs caused by the amendment. Second, Andy asserts that, contrary to our conclusion, the contracting officer did know that the Government estimate was erroneous inasmuch as he knowingly issued amendment No. 0001, which increased the cost of the work, without having the Government's original estimate increased in value.

Third, Andy contends that, while it may not have been deliberately and knowingly entrapped into verifying its bid price, it was misled into verifying its price by the contracting officer comparing the Andy bid price with the faulty Government estimate as the basis for the verification request. Fourth, Andy notes that if it were permitted to increase its price of \$25,579.20 by the requested amount of \$34,643 this would cost the Government no more than if Andy had not bid and the award had been made to the otherwise low bidder. Finally, Andy observes that it requested our Office to have an electrical engineer comment on the technical issues of its protest since it was obvious that our Office did not have the technical expertise to address these issues and since no personnel of the contracting agency with this expertise had addressed the issues.

Except for the last contention, the other arguments are merely restatements of ones previously considered by our Office. The contention that the contracting agency/contracting officer either acted negligently in using erroneous estimates or acted knowing the estimates to be incorrect was considered in our August 10, 1981, decision, supra. We stated that at the time of bid opening, the only reasonable basis the contracting officer had for suspecting a mistake in bid was the disparity between Andy's bid, the Government estimate and the other bids submitted. The record revealed that neither the contracting officer nor Andy realized the impact of the amendment on the contract cost; however, the contracting officer brought the disparity to the attention of Andy, thus properly executing his verification duty.

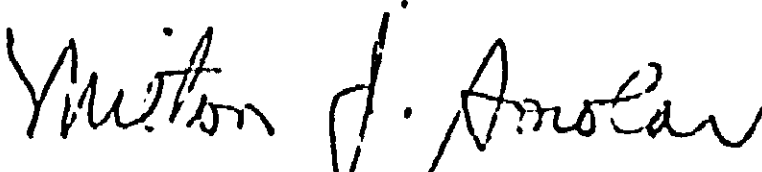
The contention that the contracting officer misled Andy with the erroneous Government estimate and requested verification in view of that estimate was also considered by our Office in 59 Comp. Gen. 363, supra. We stated that advice to a bidder as to the amount of a Government estimate and the next low bid is only for the purpose of alerting the bidder as to why the contracting officer thinks there may be an error in the low bid but it is not a guarantee of the accuracy of the Government estimate or next low bid. How the bidder chooses to use that information in deciding the extent to which it will undertake a review of its bid is a matter of judgment with

concurrent risks and the primary duty for assuring that bid prices are correct rests with the bidder.

Andy's belief that its contract price should be corrected because, had Andy not bid, the Government would have paid the same amount as the corrected contract price was also answered in our August 10, 1981, decision when we held that the bidder bears sole responsibility for preparation of the bid, and unless the mistake is mutual or the contracting officer was on actual or constructive notice of the error prior to award, acceptance of the bid consummates a valid and binding contract.

Finally, we did not find it necessary to obtain comments or advice from an electrical engineer in view of the technical evidence which was in the original record before our Office and any additional technical information would not have outweighed the legal considerations which made the denial of the claim necessary.

Accordingly, inasmuch as the arguments set forth by Andy in its present request for reconsideration were previously advanced by Andy and considered by our Office, we find no evidence demonstrating any error of fact or law in our original decisions. We affirm our prior decisions. Howard W. Roughton, III--Reconsideration, B-192673, December 8, 1978, 78-2 CPL 398.

*for*   
Comptroller General  
of the United States