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**DECISION**



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

*[Request for Reformation or Rescission of Contract]*

FILE: B-195811

DATE: September 20, 1979

MATTER OF: Courier-Journal Lithographing Company

*DLG 028041*

**DIGEST:**

No legal basis exists to reform or rescind contract because of alleged unilateral error in bid discovered after award where contracting officer did not have actual or constructive knowledge of error prior to award.

Courier-Journal Lithographing Company (Courier-Journal) requests reformation or rescission of its contract awarded under jacket 296-984, an invitation for bids (IFB) issued by the U.S. Government Printing Office (GPO). The request is based on a mistake in bid alleged to have been discovered after award.

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The IFB soliciting bids for the production of 142,000, 76-page pamphlets was sent to 20 firms. Courier-Journal submitted the low bid of \$39,994. Two other responsive bids of \$44,999 and \$48,997 were also received by GPO. The contract was awarded to Courier-Journal on August 1, 1979.

By affidavit submitted to GPO, Courier-Journal stated that it had made a mistake in bid consisting of omitting from its cost estimate 139,000 sheets of paper, along with the corresponding ink requirements, cutting and folding time, and packing cartons and skids. The error is alleged to have resulted from Courier-Journal's failure to include in its calculation the paper needed for 32 of the 76 pages of the pamphlet. Inclusion of these items was asserted to raise the bid price to \$51,753.

The general rule applicable to a mistake in bid alleged after award is that the bidder must bear the consequences of its mistake unless the mistake was mutual or the contracting officer had either actual or constructive notice of the mistake prior to award. Wolverine Diesel Power Company, 57 Comp. Gen. 468 (1978), 78-1 CPD 375.

In this case, there is no allegation or indication of mutual error or that the contracting officer had actual knowledge of the unilateral mistake. Thus, unless the contracting officer was on

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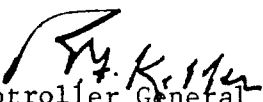
constructive notice of the possibility of error prior to award--giving rise to a duty to request bid verification, which was not done--there is no basis for contract reformation or rescission.

In the case of unilateral mistakes, a valid and binding contract is consummated upon the Government's acceptance of a responsive bid unless the contracting officer knew or should have known of the probability of an error in the bid but failed to take steps to verify it. R.B.S., Inc., B-194941, August 27, 1979, 79-2 CPD \_\_\_\_\_ .

The test for constructive notice is one of reasonableness; whether under the facts and circumstances of the particular case there are factors which should raise 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 the other bids received. B-179725, October 30, 1973; American Railroad Industries, Inc., B-187488, October 22, 1976, 76-2 CPD 361.

Bid disparities ranging from 5 to 38 percent have been held by our Office to be insufficient, standing by themselves, to charge a contracting officer with constructive notice of a mistake in bid. 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. In this instance, the difference between Courier-Journal's bid price and that of the second low bidder was approximately 13 percent, and the difference between the second and third low bid price was approximately 9 percent. Under these circumstances, we do not believe the 13 percent disparity was sufficient to place the contracting officer on constructive notice of mistake such that bid verification should have been obtained prior to award.

Thus GPO's acceptance of Courier-Journal's bid constituted a valid and binding contract and we find no legal basis for granting the relief requested.

  
Deputy Comptroller General  
of the United States