

**DECISION****DIGEST - L - Cont**  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

79-2 CPD 289

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FILE: B-196112

DATE: October 24, 1979

MATTER OF: Honor Guard Security Services

**DIGEST:**

Contract may not be reformed based on claim of unilateral mistake in bid, since bid disparities were not so great to have placed contracting officer on notice of possible error in bid, and acceptance of bid resulted in valid and binding contract.

Honor Guard Security Services (Honor Guard) requests reformation of contract No. DACA41-79-C-0001 awarded to the firm on October 23, 1978, by the Department of the Army Corps of Engineers (Corps) for furnishing guard protection and patrol services at the Weldon Spring Chemical Plant in Missouri. Honor Guard alleges that it mistakenly failed to provide in its bid for a working guard supervisor required by the specifications. The firm argues that the contracting officer should have suspected a possible mistake in the bid, and acceptance of the bid without a request for verification therefore did not result in a binding contract. We disagree.

We first note that the record indicates that in a matter pursued by Honor Guard under the contract's "Disputes" clause the firm contended that the specifications in fact did not require a working guard supervisor; however, the Armed Services Board of Contract Appeals (ASBCA) recently rejected that position. ASBCA No. 23502, September 5, 1979.

With respect to the merits of Honor Guard's mistake request, we have consistently held that the responsibility for the preparation of a bid rests with the bidder. 48 Comp. Gen. 672, 674 (1969). Therefore, when a unilateral mistake in bid is alleged after the award of a contract, our Office will grant relief

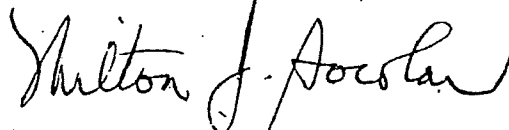
only if the contracting officer was on actual or constructive notice of the error prior to award but failed to take proper steps to verify the bid. R.B.S., Inc., B-194941, August 27, 1979, 79-2 CPD 156. There is no assertion here that the contracting officer had actual notice of the alleged error. The test for constructive notice is whether under the circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer. R. E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305.

The low bid of the 11 received under the solicitation for the services was \$94,000, but the bidder was permitted to withdraw the bid upon the presentation of evidence of a mistake. Honor Guard was the second low bidder at \$102,930. The next eight bids ranged from \$108,901.92 to \$126,734.76, and the highest bid was \$161,712. The "informal" Government estimate for the services was \$105,383.44. Honor Guard contends that the range of bids "in light of the relatively fixed cost services involved," and the fact that the incumbent contractor bid \$113,792 (fifth low), should have raised the possibility of error in the mind of the contracting officer. Honor Guard further contends that to the extent that the informal Government estimate for the services is relevant to the notice issue, the estimate was unrealistic and should have been at least \$108,334.20.

However, Honor Guard's bid was within 6 percent of the next low bid, 10 percent of the incumbent's bid, and 19 percent of all but the highest bid. In addition, the bid was within 5 percent of the informal Government estimate even as corrected by Honor Guard. In this connection, we have recognized the inexact nature of Government estimates, see Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220, and we therefore view the difference between the actual and

"corrected" informal estimates as essentially insignificant. Generally, a contracting officer would have no reason to suspect an error in a bid that is in line with the other bids received and with the Government estimate. Maximum Precision Metal Products, Inc., B-195080, August 1, 1979, 79-2 CPD 71; American Railroad Industries, Inc., B-187488, October 22, 1976, 76-2 CPD 361. Thus, 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. See Paul Holm Company, Inc., B-193911, May 2, 1979, 79-1 CPD 306. In this respect, we do not view the instant bid range as necessarily inconsistent with "the relatively fixed cost services involved." See King Brothers, Inc., B-183717, June 2, 1975, 75-1 CPD 332.

Under the circumstances, we do not believe that the contracting officer should have suspected a mistake in Honor Guard's bid. Accordingly, the Corps' acceptance of the bid consummated a valid and binding contract at the bid price, and there is no legal basis for reformation. See Galion Manufacturing Division, Dresser Industries, Inc., B-193355, June 19, 1979, 79-1 CPD 436.  
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For The Comptroller General  
of the United States