Miller J

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

[Request for Reconsideration]

FILE: B-199788 DATE: November 12, 1980

MATTER OF: Will Ross, Inc.--Reconsideration DLG052141

DIGEST:

Where bid is in line with Government expectations and contains no evidence of possible error, contracting officer was not on constructive notice of error merely because packaging requirement in solicitation was allegedly contrary to industry standard and claimant's offered prices were allegedly lower than prices which nonmanufacturing distributors should be expected to bid.

Searle-Will Ross Division (Will Ross) requests reconsideration of our decision, Will Ross, Inc., B-199788, September 22, 1980, 80-2 CPD 218, in which we denied relief from an alleged mistake in its bid discovered after award of a Veterans Administration (VA) contract for a quantity of hypodermic syringes. AGC00016

Will Ross had claimed that its bid was erroneously based upon a 50 syringe per box unit rather than the specified 100 per box requirement, and that its bid therefore reflected only one-half of its intended price. We did not sanction reformation or rescission of the contract since the mistake was clearly unilateral on the part of Will Ross, and the contracting officer was on neither actual nor constructive notice of any possible mistake in bid. We found constructive notice lacking since nothing in the information available to the contracting officer indicated the possibility of an error. The Will Ross bid was "unremarkable", we stated, since the offered prices of $6.11 and $6.60 per unit "were 18 percent higher than the preceding contractor's and within the range anticipated by the VA."

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Will Ross now contends that two factors should have alerted the contracting officer to the possibility of a gross pricing error in its bid: first, the 100 syringes per box packaging requirement was "considerably different than the industry standard" of 50 per box and, second, nonmanufacturing distributors such as Will Ross must recoup acquisition costs and thus should be expected to bid 15 to 20 percent higher than the manufacturer's price rather than 50 percent lower, as was the case here. It is urged that since the above factors placed the contracting officer on constructive notice of possible error, Will Ross should have been advised that a mistake in its bid was suspected, told of the nature and extent of the suspected error (namely, an inordinately low price), and asked to verify its bid in light of this information. Since this was not done, the claimant maintains, no valid and binding contract was created. (As we noted in our prior decision, the contracting officer telephoned Will Ross prior to award to confirm the company's price and understanding of the delivery schedule and specifications. The contracting officer's notes of the conversation, insofar as they concern price, state: "Called for commercial cost. [Will Ross' salesperson] sells item at same price as she quotes the VA. They sell their item at the same price to everyone." The call was made not because the contracting officer sought verification of a bid she thought might be mistaken, but pursuant to VA policy for dealing with a new supplier.)

It is well established that no valid and binding contract is consummated where the contracting officer is on constructive notice of a mistake in bid but fails to take proper steps to verify the bid. Constructive notice is said to exist where, under the facts and circumstances of the particular case, there were any factors which reasonably should have raised the presumption of an error in the mind of the contracting officer. Bromley Contracting Co., Inc., B-189972, February 8, 1978, 78-1 CPD 106. We emphasize that this test is one of reasonableness under all the circumstances.

Given the facts and circumstances here, we cannot reasonably conclude that the contracting officer should have suspected an error in Will Ross' bid. It may indeed be that the "industry standard"--or at least that of Will Ross' supplier--is to pack 50 syringes per box. However, the VA developed a need which could best be met by boxes of 100 syringes, and the solicitation schedule clearly defined the units upon which prices were to be submitted as boxes of 100 syringes each. Will Ross was apparently aware of this precise requirement as it maintains that it intended to take exception to the provision prior to bidding. It failed to do so, however, and we think it would be unreasonable to hold that the contracting officer should have suspected that an error might have resulted from the packaging requirement.

Similarly, we reject the suggestion that the contracting officer should have known that Will Ross' prices were lower than the prices which nonmanufacturing distributors ordinarily will bid. There is no evidence that the contracting officer was in fact aware of this alleged discrepancy, and in our view, to require a contracting officer to be familiar with the bidding practices of distributors, manufacturers and other bidding entities would impose an unreasonable and unnecessary burden. See, for example, Anabolic, Inc., B-190342, January 26, 1978, 78-1 CPD 69; R.E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305.

As noted, the Will Ross bid was "unremarkable" inasmuch as its 18 percent increase above the preceding contract price was in line with VA expectations and consistent with the VA's estimate. The claimant does not question the accuracy of the VA's estimate and the record contains no indication that reliance thereupon by the contracting officer was unreasonable. Since we find nothing else on the face of the bid signalling a possible mistake, we must conclude that the contracting officer was not on constructive notice of any error and, thus, was under no obligation to seek verification from Will Ross.

We reiterate the general rule applicable to cases involving post-award allegations of mistake in bid, that it is solely the bidder's responsibility to prepare an accurate bid. Where a mistake is made in a bid, relief is available under only two circumstances: where the mistake was mutual or the contracting officer was on actual or constructive notice of error prior to award. See Ohiocraft Printing, Inc., B-194056, February 22, 1979, 79-1 CPD 127; Department of the Interior, B-194380, April 17, 1979, 79-1 CPD 271; Cabarrus Construction Company, Inc., B-192710, September 13, 1978, 78-2 CPD 200; Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 546 (1974), 74-2 CPD 393. Since neither exception is applicable here, we are constrained by law to deny the remedy requested.

Our prior decision is affirmed.

Harry R. Van Cleve

For the Comptroller General
of the United States