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

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B-178706

June 15, 1973

The Honorable Donald E. Johnson
Administrator, Veterans
Administration

Dear Mr. Johnson:

We refer to a letter dated May 17, 1973, reference 134C, from the Director, Supply Service, concerning a mistake in bid alleged by the Market Forge Company (Market Forge) after award of a contract under solicitation No. M2-46-73, issued by the Marketing Center, Mines, Illinois.

The Director agrees with the contracting officer's recommendation that the unnumbered contract (Purchase Order No. 73-MC-20139) for two 100-pound ice making and dispensing machines totaling \$3,644 be cancelled without liability to the firm.

Bids were requested on ice making and dispensing machines for several Veterans Administration (VA) hospitals. The solicitation schedule listed 24 items, and Market Forge submitted bids on items 2, 6, and 7 (all with a 60-pound capacity), items 17 and 23 (both with a 20-pound capacity), and item 8 (with a 100-pound capacity).

While descriptive literature was not required, the contracting officer has informed us that Market Forge was the only firm of the 11 firms submitting bids on item 8 that did not submit brochures describing the equipment it was offering. By checking the brochures and model numbers offered by the other firms against the VA specification, the contracting officer determined that 9 of the 11 bids received, including 4 bids lower than Market Forge's bid, were nonresponsive to the solicitation. Only Market Forge's bid of \$1,822 per unit and another bid in the amount of \$2,337.75, were considered responsive. Therefore, the contracting officer awarded item 8 to Market Forge on March 7, 1973.

On March 15, Market Forge telephoned the contracting officer and alleged a mistake in bid on item 8. In a letter dated March 16, 1973, the firm's contract manager stated:

Our quotation was intended to be for Item 9 which is a size 3 - 60 lb. capacity Ice Station. We mistakenly placed our price opposite Item 8, a unit which we cannot

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supply. You will note that we consistently omitted a place for the other size 3 Ice Station which was located throughout your quotation.

Where a mistake in bid is alleged after award of a contract, our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of the error prior to award. 48 Comp. Gen. 672, 675 (1969). Constructive notice is said to exist when the contracting officer, considering all the facts and circumstances of a case, should have known of the possibility of an error in bid. 44 Comp. Gen. 383, 386 (1965).

In his memorandum dated April 3, 1973, the contracting officer (in support of his position that the contract should be cancelled) states that he knew that Market Forge had never bid on 100-pound capacity machines in prior procurements. He also states that, because of Market Forge's pattern of bidding (the fact that it did not bid on any of the other 100-pound capacity machines), he should have been aware of the possibility of an error in Market Forge's bid and should have requested verification on item 8.

In the circumstances, we agree with the contracting officer's statement that he should have been aware of the possibility of a mistake in Market Forge's bid on item 8, and should have requested verification of the bid. B-170941, December 15, 1970.

Accordingly, the contract may be rescinded without liability to the Market Forge Company.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States