



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

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B-179587

September 27, 1973

The Honorable
The Secretary of the Army

Dear Mr. Secretary:

Reference is made to a letter dated August 22, 1973, from the General Counsel, Office of the Chief of Engineers, requesting our decision relative to a mistake in bid alleged by the contractor after award under IFB DACW25-73-B-0044. The invitation for bids called for the construction of metal buildings in which emergency generators will later be installed at nine separate navigation locks on the Mississippi River. Item No. 1 of the bid schedule covered the construction of the buildings and Item No. 2 covered the installation of utility lines from existing buildings to the new buildings.

On June 19, 1973, five bids were opened. The three lowest bids for both items were \$126,160, submitted by Mr. William Housewright; \$131,746, submitted by Eddinfield Construction Company; and \$135,987, submitted by Leonard Blinderman Construction Co., Inc. The Government's estimate was \$114,375, without profit. After bid opening, a discrepancy was noted in the low bid under Item 2 of the bidding schedule. The unit prices multiplied by the quantities did not agree with the extended prices. In every subitem, the extended price exceeded the unit price, and the result was that the correctly extended unit prices, when added up, totalled \$120,451, or \$5,709 less than the total bid price.

Without asking the low bidder to confirm his bid, the contracting officer notified him in a letter dated June 27, 1973, that his bid was accepted in the amount of \$120,451.

By letter dated July 3, 1973, Mr. Housewright alleged a mistake in bid and requested reformation of the contract to that of his original bid of \$126,160. In this letter, and in an earlier

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B-179587

meeting with the contracting officer, the bidder stated that the unit prices were in error and that the difference between the unit prices and the extensions represented the cost of installing utility lines inside the buildings to be constructed. The contractor explained that the estimated quantities listed under Item 2 represented the linear feet distance between the existing buildings at the locks and the new buildings to be constructed and that his unit price covered only the cost of those quantities. The cost of installing utility lines inside the new buildings was included in the extended prices. According to the contracting officer, the bidder admitted that he was perhaps careless in reading the payment provisions at page 3-3 and page 5-14 of the specifications which indicate that the cost of installing utility lines inside the buildings should be included in the lump-sum prices under Item 1 of the bidding schedule.

At the meeting, the contracting officer reminded the bidder of the provision in the IIB, page DF-10, which warned bidders:

"* * * All extensions of the unit prices shown will be subject to verification by the Government. In case of variation between the unit price and the extension, the unit price will be considered to be the bid."

In a statement dated July 18, 1973, the contracting officer stated that he should have been on notice of the bidder's error prior to the award:

"* * * The error was apparent on the face of the bid in that there was a variation between every unit price and the extended price under Item 2. A closer examination prior to award would have disclosed that the mistake was not simply an error in arithmetic but bore some correlation with the quantities for each unit. For that reason, the low bidder should have been asked to verify his bid prior to award in accordance with AEPR 2-406.3.* * *"

In B-170288, September 10, 1970, a decision analogous to the instant case, the contracting officer, after discovering a discrepancy between the unit price and the extended price, awarded the

B-179587

contract to the low bidder on the basis of the corrected unit price, without asking for verification. After being awarded the contract, the bidder notified the contracting officer that it had made a mistake in the submission of the unit price, which resulted in a unit price of \$1,000 less than intended. The bidder requested reformation of the contract to an amount which equalled the total extended amount stated on the bid form. The requested relief was granted by this Office. The general rule is that a contract will not be reformed when a unilateral error in the bid price is alleged after the contract has been awarded because once a bid has been accepted, a binding contract is formed and the contractor must bear the consequences of his own error. See Orden & Dougherty v. United States, 102 Ct. Cl. 249 (1944); Salipman v. United States, 56 F. Supp. 505 (1944). However, if the contracting officer had actual or constructive notice of the probability of error in the low bid, the acceptance of that bid does not result in a binding contract. Under such circumstances, a valid legal basis for reformation of the contract exists. See B-160433, December 1, 1966; B-160081, October 10, 1966; B-160167, October 6, 1966; B-158675, March 30, 1966.

In the instant case, the contracting officer never requested the low bidder to verify his bid price. In our opinion, the discrepancy between every unit price and every extended price under Item 2 should have indicated to the contracting officer that an error probably existed in the bid, and the bid should not have been accepted without first requesting verification thereof. 51 Comp. Gen. 488 (1972). Documentation submitted by the bidder and a subcontractor indicates the nature and amount of the mistake.

Accordingly, since a bona fide mistake in bid was made and the intended bid price has been established, the contract may be amended to provide for a total price of \$126,160. The bid when corrected will still be lower than the other bids received on the solicitation. A reference to this decision should be included in the contract file.

As requested, the file furnished with the letter of August 22 is returned herewith.

Sincerely yours,

Paul G. Dembling
Acting
Comptroller General
of the United States

Enclosure

cc: Mr. E. Manning Seltzer
General Counsel, Office of the Chief of Engineers
Department of the Army
Washington, D.C. 20314