



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

B-179266

August 20, 1973

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The Honorable Donald E. Johnson
Administrator, Veterans Administration

Dear Mr. Johnson:

In response to a letter of July 19, 1973, reference number 1340, from the Director, Supply Service, Department of Medicine and Surgery, we forward the following decision concerning a request by Electro Nucleonics, Inc., for the modification of service contract No. V664-P-150 with the Veterans Administration Hospital, San Diego, California, because of an alleged mistake in its proposal.

The hospital had purchased a 2120 GEMSAAC Analyser system from Electro Nucleonics. Since preventive maintenance on the GEMSAAC is essential to insure proper care of patients and Electro Nucleonics is the exclusive supplier of this service, the hospital entered into negotiations with the firm to provide for the continuation of preventive maintenance service after the original warranty service arrangement on the GEMSAAC expired on January 31, 1973.

On November 17, 1972, Electro Nucleonics quoted a price of \$4,200 for a service and maintenance contract for the GEMSAAC, covering the period from February 1, 1973, to January 31, 1974. But since funding was available only through the end of the fiscal year, the hospital asked Electro Nucleonics to revise its proposal to cover only the 5-month period from January 31 to June 30, 1973. The new proposal, dated February 23, 1973, was for a total of \$450, or \$90 per month. The contract was awarded to Electro Nucleonics on March 9, 1973.

On March 12th, the contracting officer telephoned the firm's field service department in order to verify the contract price which was lower than anticipated. The department head was away at the time so the contracting officer spoke with a secretary in her office who confirmed the quoted figure.

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On March 19, 1973, and by subsequent correspondence, however, the department head notified the hospital that the proposal price should have been \$350 per month. The department head advised that the error resulted from confusing the GEISAC contract with another contract for computer service for \$90 per month with the hospital. Electro Ineleonics submitted supporting documentation which in the view of the Director, Supply Service, " * * * leaves little room for doubt that a bona fide error was made in its bid, as alleged." In this regard, the Director, Supply Service, forwarded the mistake claim with a favorable recommendation.

As a general rule no relief will be granted for a unilateral mistake in bid after the bid has been accepted in good faith by the Government. But no valid and binding contract is consummated and modification of a contract is available in those cases where the contracting officer knew or should have known of the error, but neglected to take the proper steps to verify the bid. 53 Comp. Gen. (B-170059), July 17, 1973; 45 Comp. Gen. 305, 307 (1955); and B-176374, October 12, 1972. We note that the accepted proposal price was only slightly more than one-quarter of the \$350 monthly charge which might have been anticipated on the basis of the firm's earlier quotation of \$4,800 for a 1-year period. Because of this, we believe that the contracting officer was on constructive notice of a possible mistake in the firm's proposal, and that, since verification of the proposal price was not obtained before award, no valid and binding contract was effected. In addition, we do not view the post-award confirmation of the proposal price by the secretary to the firm's department head as providing a basis to preclude relief here.

Accordingly, the contract may be modified to reflect a monthly service charge of \$350.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States