

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

FILE: B-183653

DATE: November 28, 1975

MATTER OF: Data Documents, Inc.

DIGEST:

Notwithstanding that prompt payment discounts for payment within less than 20 calendar days could not be considered in evaluation of offers, contracting officer should have been on constructive notice of error in prompt payment discount "25%-10 days," since discounts offered by other proposers ranged from 0.25 percent to 3 percent for payment within 20 days and short interval discounts are generally not greater than 5 percent in industry. Since contracting officer was on constructive notice of mistake in low proposal and no verification was requested, GAO will not object to contract reformation to reflect discount of 2.5 percent for payment within 10 days.

Request for proposals (RFP) No. FPOP-F5-80814-N for tabulation paper was issued by the Federal Supply Service, General Services Administration (GSA) on September 12, 1974. Award was made to the low offeror, Data Documents, Inc. (Data), on December 17, 1974, on the basis of its initial proposal and without requesting verification of the prices offered. Thereafter, Data alleged to the contracting office that the decimal point had been misplaced in its offered prompt payment discount. As a result, the discount read "25%-10 days," rather than "2.5%-10 days" as intended. Article 9 of Standard Form 33A, which was incorporated in the RFP by reference, provides that "* * * prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award * * *." Therefore, Data's offered prompt payment discount for payment within 10 days was not considered in the evaluation of offers. GSA has requested our approval of the contracting officer's recommendation that the contract be reformed pursuant to Federal Procurement Regulations (FPR) § 1-2.406-4 (1964 ed. circ. 1), entitled "Disclosure of mistakes after award," to reflect a prompt payment discount of 2.5% for payment within 10 days. This recommendation is predicated upon the contracting officer's view that Data's prompt payment discount of "25%-10 days" was an obvious mistake of which he should have been on notice before award of the contract.

This Office will grant the appropriate relief where a mistake has been alleged subsequent to the award of a contract if the mistake was mutual or the contracting officer was on actual or constructive notice of the error prior to award. Mid-Pacific Industries, Inc., B-182777, January 24, 1975, 75-1 CPD 46, and cases cited therein.

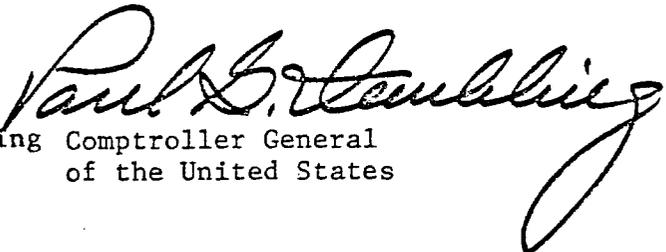
If a contract is awarded when the contracting officer knew or should have known of the probability of an error in the proposal, but neglected to take the proper steps to verify the proposal, no valid and binding contract is consummated on that basis. Otherwise, the proposer is required to live with the consequences of its unilateral mistakes. In determining whether the contracting officer had a duty to verify the proposal, our Office will review the facts to determine whether any particular factors were present that reasonably should have raised a presumption of error in the contracting officer's mind. Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90 and cases cited therein.

Here, the prompt payment discount at issue could not be considered in the evaluation of proposals. However, the duty imposed by FPR § 1-2.406-1 (1964 ed. circ. 1) to examine bids for mistakes is not limited to an examination of those factors which are considered in bid evaluation. B-177532, March 26, 1973; 50 Comp. Gen. 151 (1970). We have held that this duty to examine, and the duty to verify suspected mistakes is applicable to negotiated procurements as well. Autoclave Engineers, Inc., B-182895, May 29, 1975, 75-1 CPD 325, and cases cited therein. Thus, since the contract price could be substantially affected based on the figure that was inserted in this case (See FPR § 1-2.407-3(d) (1964 ed. amend. 95)), we agree with the contracting officer that he should have been on notice of the possibility that Data had erred in offering its discount.

The prompt payment discounts offered by other competitors ranged from 0.25 percent to 3 percent for payment within 20 days. The contracting officer states that prompt payment discounts for short intervals for this type of procurement are generally not greater than 5 percent. Although simply moving the decimal point could result in a figure of either 2.5 percent or 0.25 percent, Data has alleged that discount which is both more favorable to the Government and consistent with those proposed by the other offerors. Further, we note that Data's proposal would be low in either case.

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Accordingly, since the contracting officer was on constructive notice of a mistake in Data's proposal and no verification of Data's proposal was requested, we will not object to reformation of the contract to reflect a prompt payment discount of 2.5 percent for payment within 10 days, as administratively recommended.


Acting Comptroller General
of the United States