

DECISION

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

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FILE: B-184249

DATE: November 14, 1975

MATTER OF: R. E. Lee Electric Co., Inc.

DIGEST:

When mistake in bid is alleged after award, no reformation of the contract is granted where mistake was unilateral and contracting officer was not on actual or constructive notice of mistake in bid of low bidder.

Invitation for bids (IFB) No. N62467-74-B-0184 was issued by the Southern Division, Navy Facilities Engineering Command (NAVFAC) for sewage system improvements at the Marine Corps Recruit Depot, Parris Island, South Carolina.

The two lowest bids of the fifteen received were from R. E. Lee Electric Company, Inc. (Lee) at \$201,386.00 and Tesco Inc. (Tesco) at \$219,473.00. Award was made to Lee for the basic item and all three additive items in the amount of \$201,386.00.

Shortly after award, Lee alleged that a mistake in its bid had been caused by a mathematical error made by a subcontractor, who had provided a price on the basis of one unit of an item whereas four units should have been quoted. Lee requested that the Navy reform its contract by increasing the price in the amount of \$15,506.00 plus additional costs for sales tax and allowed mark-ups. The Navy requested a decision from this Office as to the propriety of reforming the contract.

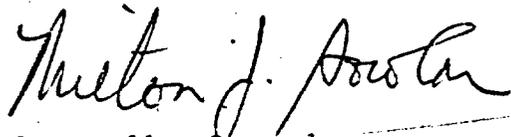
When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. Armed Services Procurement Regulation (ASPR) § 2-406.4 (1974 ed.); 30 Comp. Gen. 509 (1951). We have held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the bid. 37 Comp. Gen. 685 (1958); 17 Comp. Gen. 575 (1938); Fritz A. Nachant, Inc., B-181028, July 11, 1974, 74-2 CPD 24, affirmed upon reconsideration October 21, 1974, 74-2 CPD 216. In determining whether a contracting officer has a duty to verify bid prices we have stated:

"* * * the test is whether under the facts and circumstances of 'the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer' (Welch, Mistakes in Bid 18 Fed. B. J. 75, 83) without making it necessary for the contracting officer to assume the burden of examining every bid for possible error by the bidder. * * *" 49 Comp. Gen. 272, 274 (1969), quoting B-164845, January 27, 1969.

Originally there were 15 bids received, ranging from the low bid of \$201,386.00 submitted by Lee to a high bid of \$382,600. The Government estimate for the contract was \$346,600. While Lee's bid was substantially below the Government estimate, only one of the 15 bids was in excess of the estimate. An examination of the abstract of bids indicates that the 15 bids reflect a natural upward progression. Under these circumstances we conclude that the gradual increase in bids would not warrant the conclusion that the contracting officer should have been on notice or suspected an error in the bid. See Fritz A. Nachant, Inc., supra.

Furthermore, we should emphasize the fact that Lee was required to exercise reasonable diligence in the preparation of its bid and that the contracting officer was under no obligation to assure that Lee's bid included all normal items of cost, including profit. While a contracting officer has a responsibility to advise a bidder when a mistake in bid is suspected, United States v. Metro Novelty Manufacturing Co., Inc., 125 F. Supp. 713 (S.D.N.Y. 1954), "/it/ would be detrimental to the interests of the Government in fostering and preserving [the competitive bidding system] to impose a duty upon a contracting officer to assure for himself that a low bid regular on its face was computed correctly with due regard to economic conditions, past procurements, reasonable degrees of price progression of other bids, or other matters purely incidental to the written bid." 39 Comp. Gen. 405 (1959).

Therefore, we must conclude that the bid was accepted by the Government in good faith and without notice, either actual or constructive, of a mistake, and that a valid and binding contract resulted. Accordingly, no reformation of the contract to include an additional sum may be granted.



Acting Comptroller General
of the United States