

# DECISION



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

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FILE: B-185201

DATE: January 2, 1976

MATTER OF: Charles and Son Window Cleaning Co.

## DIGEST:

1. Where there was wide disparity between bids and price for prior year's window washing contract and low bid for current contract requiring substantially more work, contracting officer was on notice of error in bid for which contractor is entitled to relief since no valid and binding contract is consummated where contracting officer knew or should have known of error and neglected to verify bid.
2. Although GAO would not object to relief for contractor that made error in bid, such modification should not exceed amount of next lowest correct bid.

The Veterans Administration (VA) has requested our decision regarding an error Charles and Son Window Cleaning Co. (Charles and Son) alleges was made in its bid for window cleaning service at the Veterans Administration Hospital, Perry Point, Maryland.

Solicitation No. 641-21-75, issued on August 1, 1974, sought bids for one (1) job to consist of two (2) washings of 2,182 windows and frames. Eight bids received at the September 12, 1974, opening ranged from a low bid of \$3,100 submitted by Capitol Building Services, Inc. (Capitol), to a high of \$28,900. Since the wide disparity in bids indicated the possibility of a bidding error, the contracting officer requested that the low bidder verify its bid. Verification by Capitol was received by telephone that the bid price was correct and that it intended to perform. The contract was awarded to the low bidder on September 30, 1974. However, by letter dated October 21, 1974, the low bidder advised VA that it could not perform the contract because of its inability to obtain a performance bond. This was allegedly due to the enormous differences in the bid prices. Therefore, VA offered to accept other securities in lieu of the performance bond required if it would complete the contract. No action was taken by the low bidder, and on November 27, 1974, its contract was terminated due to nonperformance.

The VA called the second low bidder, Charles and Son, to determine if it could still perform the contract at its original bid price. Charles and Son's agreement resulted in the December 10, 1974, award of contract number V641P-1581 to cover two (2) washings (one in December 1974 and one in May 1975, in lieu of April as listed in the contract) in the total amount of \$4,999.90 for item 1, \$188.00 for item 2, and \$173.00 for item 3, less prompt payment discounts.

On May 6, 1975, Charles and Son complained that it had only been paid half of the price owed for item 1 services performed under the contract. In this regard, Charles and Son alleged that its bid price was submitted as the total cost for each washing and not for performance of the complete contract.

Our review of the record indicates that the solicitation clearly required bids to be submitted as the total cost for two washings. This fact was also confirmed by the contracting officer's December 10, 1974, letter to the contractor. An acknowledgment that the contents of this letter and the prior telephone conversation had been understood was signed on January 7, 1975, by the owner of Charles and Son, and returned to the VA.

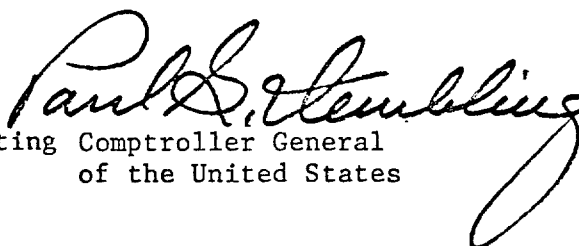
However, unlike the situation with the low bidder, Charles and Son was not requested to verify its bid on the basis of a suspected bidding error due to the wide disparity in the bids received. Neither was its bid price compared with the cost of the prior year's award for window washing. The contracting officer states that such comparison would have put him on notice of error since that contract had been awarded to Charles and Son for one (1) washing of 1,637 windows at a cost of \$4,099.35 (\$2.50 per window less prompt payment discount). Therefore, the acceptance of its current bid for item 1 to clean 2,182 windows twice at \$4,999.90 resulted in a contract at the price of \$1.15 per window. Although Charles and Son twice confirmed that it understood the terms of the contract and could perform at the award price, we believe that a mistake was made in its bid.

Our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid as required by § 1-2.406-4 of the Federal Procurement Regulations (1964 ed. circ.1). General Electric Supply Company, B-179913, January 8, 1974, 74-1 CPD 3.

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Generally, the quantum of relief available to a contractor who has made a bona fide error in bid is the amount of the next lowest correct bid. The rationale for such limitation is that the contracting officer is bound by 41 U.S.C. § 253(b) (1970) to make award to the lowest responsible bidder since he has no authority to bind the Government to other than the lowest acceptable bidder.

Accordingly, we would not object to an increase in contract price for Charles and Son Window Cleaning Co., not to exceed the amount of the next lowest correct bid.

  
Acting Comptroller General  
of the United States