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DECISION



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

FILE: B-195821

DATE: November 14, 1979

MATTER OF: Scholl-Choffin Company DLG 03338

DIGEST:

Entitlement to

Contractor may be paid additional compensation under fixed-price contract for replacement of condensate lines since, as result of error on drawing scale, parties entered into contract on basis of mutual mistake and actual length of lines to be replaced was double that indicated in IFB. Amount of additional compensation is to be verified to agency by contractor prior to payment.

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DLG 03337

The Director, Supply Service, Veterans Administration, has requested our decision as to whether the Scholl-Choffin Company (Scholl-Choffin) may be paid additional compensation for work performed under contract No. V562-259, which required the contractor to replace condensate return lines, including insulation, at the Veterans Administration Medical Center, Erie, Pennsylvania. Scholl-Choffin states that its bid price was calculated upon the basis of the drawings accompanying the invitation for bids. The drawing of the basement floor plan showing horizontal pipe runs bore the legend "Scale - 1/8" = 1'0", when in fact the drawing was prepared on a scale of 1/16" to 1'0". Therefore, the horizontal pipe runs were twice as long as the scale on the drawings indicated.

The invitation for bids specifically stated a bidder's failure to visit the site and to take reasonable steps to ascertain the general and local conditions would not relieve it from responsibility for estimating properly the difficulty or cost of performance. Although

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the drawings contained a statement that all dimensions and existing conditions "shall" be checked and verified by the contractor, Scholl-Choffin made no pre-bid efforts to verify dimensions at the site.

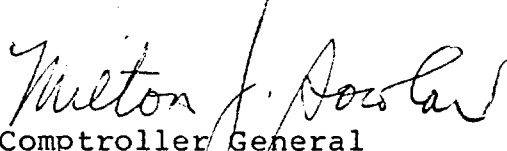
The agency's estimated cost range for the project was \$90,000 to \$115,000. As Scholl-Choffin's bid of \$78,000 was \$34,000 lower than the next low bid, the agency requested and received verification of the bid price and supporting worksheets. A Notice to Proceed was issued on February 26, 1979.

By letter of June 25, 1979, Scholl-Choffin informed the agency that the contract drawings did not correspond to the actual dimensions of the building and that as a result, its bid was estimated on the basis of using only half as much horizontal piping and insulation as would actually be required. After meeting with the agency, Scholl-Choffin submitted an estimate of \$33,957.94 for the additional cost to be incurred due to the discrepancy. The agency recommends the contract be increased by that amount.

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. Boise Cascade Envelope Division, B-185340, February 10, 1976, 76-1 CPD 86; Autoclave Engineers, Inc., B-182895, May 29, 1975, 75-1 CPD 325. Although it appears Scholl-Choffin may have been negligent in not discovering the misstatement and ascertaining the facts for itself before submitting its bid, the agency negligently misstated a material fact and misled Scholl-Choffin. This, then, is a case of mistake by the contractor and accidental misrepresentation by the agency which places the parties in the position of persons who have made a mutual mistake of material fact. The general rule in such circumstances is that the contract may be rescinded or reformed because it would be unjust to permit the one who induced the

mistake to benefit, in whole or in part, by its misrepresentation. Morgan Roofing Company, 54 Comp. Gen. 497 (1974), 74-2 CPD 358. Crawford Paint Company, B-182257, November 20, 1974, 74-2 CPD 273; Iowa Road Builders Company, B-182809, January 28, 1975, 75-1 CPD 62.

Although we believe reformation is appropriate, the exact amount which should be added to the contract price is unclear. Scholl-Choffin's estimate of \$33,957.94 for the additional cost uses the unit prices and markup percentages contained in its pre-bid worksheets. However, there is no explanation as to why the unit price for material would be the same for the greatly increased quantity needed. Also, the estimate does not appear to include all the items of material shown on the pre-bid worksheet and it does not explain subcontractor's quotations. Thus, we are unable to determine, on the basis of the documents submitted to this Office, that reformation in the requested amount would be appropriate. We are advising the Veterans Administration to further verify the appropriate amount to be paid before reforming the contract.


For the Comptroller General
of the United States