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DECISION

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

[Request for Contract Rescission]

FILE: B-195341 DATE: January 19, 1981

MATTER OF: Handy Tool & Manufacturing Co., Inc.

DIGEST:

Judgment error, i.e., where bidder makes knowing judgment and assumes known risk at time it submits bid such as computing bid on basis of estimate of supplier's costs instead of obtaining actual quotation, is not a mistake for which relief may be granted. 58 Comp. Gen 793; B-162379, October 20, 1967, and other decisions allowing relief where the bid was so low so as to raise presumption of error regardless of whether bidder established existence of mistake, as opposed to judgment error, will no longer be followed.

Handy Tool & Manufacturing Co., Inc. (Handy) requests rescission of contract No. DAAK01-77-C-5362 alleging it erroneously estimated subcontractor costs when computing its bid for item 1, and that it mistakenly assumed the availability of certain supplies upon which it based its bid for item 2.

On December 13, 1976, the Army Troop Support and Aviation Materiel Readiness Command (Army), St. Louis, Missouri, issued invitation for bids (IFB) No. DAAK01-77-B-5131 for 20 mechanical drive housings (item 1) and 21 vertical housings (item 2). The bids received were as follows:

	Item 1	Item 2
Dunrite Tool & Die Corp. (Dunrite)	$ 995.00	$ 395.00
Handy	1,495.00	1,035.00

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Hoether Tool & Machine Co.	2,758.82	1,925.00
Alton Iron Works	4,500.00	3,965.00

Handy was the low bidder for items 1 and 2 after the Army permitted Dunrite to withdraw its bid due to a mistake in bid. Because the processing of Dunrite's mistake claim delayed award, the Army requested Handy to extend its bid acceptance period from March 15, 1977, to April 14, 1977. On March 7, Handy refused, stating that it did not want the contract award. Handy alleges, and the Army denies, that Handy notified the contracting activity of an alleged "mistake" in its bid. In any event, the contracting officer accepted Handy's bid and awarded the contract to Handy on March 10, 1977.

On March 14, 1977, Handy sent the Army a telegram formally alleging a "mistake" in its bid, and on April 4, 1977, Handy submitted written details describing two errors. The first error involved item 1 and consisted of Handy's having formulated its bid on the estimated cost of obtaining certain castings from a foundry instead of requesting actual quotations from potential subcontractors prior to submitting a bid. After bid opening, Handy requested such a quotation and discovered it to be significantly higher than Handy had estimated. The second mistake involved item 2 and consisted of Handy's having assumed the availability of 7-3/4 inch alloy steel tubing. Handy alleged that after award it was unable to obtain the tubing from any source and would have had to use 8 inch tubing, resulting in greater costs.

(Handy refused to perform the contract and the Army terminated the contract for default.)

Regardless of whether Handy claimed a mistake in bid prior to award, no remedial action is available unless a mistake has been made. The Navy reports that 7-3/4 inch

alloy steel tubing is generally available and has identified at least one source for the tubing. Handy has not contested the existence of that source. Thus, we do not find any basis for Handy's claimed second mistake. With respect to the first mistake, we agree with the Army that Handy's error is not the type of mistake for which relief may be granted.

The bidder must bear responsibility for the preparation and submission of a bid, including ascertaining the exact cost of any supplies to be obtained from its supplier. If the bidder does not obtain a firm price from its suppliers on which to compute its bid, any post-bid opening increase in the price relied upon by the bidder does not afford a basis for relief. 31 Comp. Gen. 323 (1952).

Prior to 1970, and on some occasions since, we allowed relief in cases where the bidder was ignorant of the supplier's costs, and the bid was so low as to raise a presumption of error in the mind of the contracting officer. See, e.g., B-162379, October 20, 1967. The basis for relief was the basic principle that if a material mistake is made by one party to a contract and the mistake is known by the other party, or because of accompanying circumstances the other party had reason to know of the mistake, the party making the mistake has the right to rescission. 44 Comp. Gen. 383, 386 (1965). Under such circumstances, we did not allow the contracting officer to overreach the bidder by snapping up an offer that was too good to be true. See Wender Presses, Inc. v. United States, 343 F.2d 961, 963 (Ct. Cl. 1965). A valid contract resulted only where the Government notified the bidder of the nature and extent of a suspected mistake and obtained the bidder's verification of the bid. 44 Comp. Gen., supra, at 386.

However, in 1970 the Court of Claims made clear that:

> "* * *The mistake, to invoke such principles, must be * * * a clear cut clerical or arithmetical error, or misreading of specifications, and * * * [does] not extend to mistakes of judgment."

Ruggiero v. United States, 420 F.2d 709, 713 (Ct. Cl. 1970); see also National Line Co., Inc. v. United States, 607 F.2d 978 (Ct. Cl. 1979). We take this to mean that the Government does not overreach a bidder who makes knowing judgments and assumes known risks at the time it submits a bid, since the bidder bid exactly what it intended to bid. See generally Tony Downs Food Co. v. United States, 530 F.2d 367, 373 (Ct. Cl. 1976). Therefore, to the extent B-162379, supra, and other decisions allowed relief without requiring the bidder to establish the existence of a mistake as opposed to a judgment error, they will no longer be followed.

Recently we had occasion to consider a pre-award mistake-in-bid claim submitted by a bidder that had been unable to obtain price quotations from a supplier, and therefore computed its bid on estimated costs. Relying in part upon B-162379, supra, we allowed the bidder to withdraw its bid because the contracting officer suspected the possibility of mistake since the bid was significantly lower than the other bids received. Department of the Navy--Advance Decision, 58 Comp. Gen. 793 (1979), 79-2 CPD 215. We believe that decision does not accord with our decision here and it also will no longer be followed.

The correct rule is that the bidder generally must bear responsibility for the submission of a bid, including ascertaining the exact cost of any supplies to be obtained from a supplier. Where the bidder knows it lacks a firm price from its suppliers but elects to submit a bid based upon the bidder's own estimate, the bidder (in this case, Handy) must bear the risk that the actual supplier's costs will be higher than the bidder's estimate. See 31 Comp. Gen., supra, and Bill Bouska Construction, Inc., B-196786, December 2, 1980, 80-2 CPD ____, where we viewed a bidder's reliance on a supplier's price quote that by its own terms was not firm as a judgmental error rather than a mistake for which relief was available under the mistaken bid rules. Consequently, we consider Handy to have made a judgment error here rather than a "mistake" for which mistake-in-bid relief can be obtained.

In recent years our Office has also permitted relief, where otherwise proper, in cases where the bidder's claim for relief was based upon a firm, but erroneous quotation from a subcontractor. MKB Manufacturing Corporation, 59 Comp. Gen. 195, 197-8 (1980), 80-1 CPD 34; B-169901, June 19, 1970. Since the subcontractor's error precluded the bidder from making a knowing judgment, we believe these cases still represent good law.

Of course, if under any circumstances the actual prices are such that an award to the bidder would mean that the Government was obviously getting something for nothing, then relief should be allowed on the basis that it would be unconscionable for the Government to accept the bid. See Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 547, 552 (1974), 74-2 CPD 393. We recently held that, in itself, the fact that a second low bid was 130 percent more than the awardee's bid is insufficient to find a contract unconscionable. Andy Electric Company, B-194610, April 1, 1980, 80-1 CPD 242. Handy's bid was not so low that the Government knew or should have known it was getting something for nothing. In fact, Handy's prices for the two items were higher than the prices paid in the prior year's procurement as increased to reflect inflation.

The claim is denied.

Milton J. Socolar

For the Comptroller General
of the United States