

**DECISION**



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

B-213160.2

**FILE:** Donald Owen & Associates, Inc.--Request  
**DATE:** August 29, 1985  
**MATTER OF:** for Reconsideration

**DIGEST:**

Original decision is affirmed where party requesting reconsideration does not demonstrate that it was legally incorrect.

The Department of the Navy (Navy) requests reconsideration of our decision in Donald Owen & Associates, Inc., 63 Comp. Gen. 371 (1984), 84-1 CPD ¶ 525, on the ground that the decision is erroneous as a matter of law. In that decision, citing 51 Comp. Gen. 423 (1972), we held that the bids of both bidders under invitation for bids No. N62474-83-B-4817 (for building repairs and alterations) should have been rejected since both bidders mistakenly bid on the basis of making repairs and alterations with the building unoccupied rather than occupied, as was required by the specifications. The Navy had rejected the bid of the mistaken low bidder, after it had refused to accept award at its bid price, but had awarded the contract to the other bidder in view of that bidder's waiver of its mistake. The award to the other bidder was not proper, we concluded, since, without having received bids prepared on the basis of the requirements in the specifications, there could be no assurance that an awardee's bid would represent the best price for the work.

We affirm our decision.

The Navy first argues that our decision requires the rejection or withdrawal of mistaken bids based only on self-serving uncorroborated bidder statements as proof of the existence of a mistake. It is also argued that, even assuming the awardee's price was mistakenly based upon contract performance with the building unoccupied, there is nothing to show that the rejected low bidder would have bid lower than the awardee had it bid on performing the work with the building occupied.

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Our decision explicitly did not accept only self-serving bidder statements as proof of mistake. We noted that, during separate post-bid opening discussions with the two bidders:

". . . each of the bidders, supported by corroborating statements from the same two subcontractors who were to perform for each of them, stated that its bid was based upon the building being unoccupied."

Further, the record reflects the fact that the Navy suspected a mistake because of the disparity in the bid prices (\$149,950 and \$171,000) and the government estimate (\$200,000) and requested verification from Owens, the low bidder. Thus, the "proof" of mistake was not based entirely upon uncorroborated evidence. See Brickwood Contractors, Inc., B-217219, June 26, 1985, 85-1 CPD ¶ 723.

With regard to price, we could not make any assumption as to what the bidders would have bid had they based their bids on compliance with the specifications. In this connection, we note that when both bid on the basis that the building was unoccupied, Owen's price was more than \$20,000 lower than the awardee's. Moreover, from the record in this case, it appears that not only was the awardee permitted to waive its failure to bid in accordance with the specification, but the Navy also agreed after bid opening to vacate areas of the building during asbestos removal.

In the particular circumstances of this case, we remain of the view that neither bid should have been accepted and, therefore, affirm our decision.



Acting Comptroller General  
of the United States