

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20546

B-177477

DEC 27 1972

Dear Mr. Attorney General:

We refer to a letter dated November 13, 1972, from the Assistant Attorney General for Administration, requesting a decision on the propriety of permitting correction after award of a mistake in bid claimed by Sacramento Sky Ranch, Inc., the low bidder under Invitation for Bids (IFB) No. SPD 44-72, issued by the Immigration and Naturalization Service.

The requirements for the subject IFB were set forth on page 23, Schedule and Offer, of the solicitation, in pertinent part as follows:

"Item No.

1. Exchange purchase of engine, aircraft, remanufactured, 230 H.P., Continental Model O-470-R Specification 13 to include: * * *
2. Exchange allowance (credit) to be applied against equal number of Item 1 for run-out aircraft engine, 230 H.P., Continental Model O-470-R.
3. Exchange purchase of engine, aircraft, remanufactured, 230 H.P., Continental Model O-470-R, Specification 13, to include: * * *
- e. Each engine shall have 100% new factory complete, cylinder assemblies in all cylinder positions installed by the factory at time of remanufacture.
4. Exchange allowance (credit) to be applied to equal number of item 3 for runout aircraft engine 230 H.P. Continental O470R."

When bids were opened on May 31, 1972, it was noted that Sacramento had offered a 2 percent, 45 calendar days, prompt payment discount for the requirement, and had stipulated that such discount did not apply on "engine deposit." The concern's prices on the four items set out above were:

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<u>"Item No.</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
1	4	\$3,267.00	\$13,068.00
	Deposit	1,300.00	<u>5,200.00</u> 18,268.00
2	4	1,300.00	5,200.00
3	4	5,012.49	20,049.96
4	4	1,300.00	5,200.00"

Since Sacramento was determined to have submitted the only responsive bid for the requirement, the contracting officer reports that he subsequently awarded contract No. SPD-6-73 to the concern for Items 3, 4, and 5 (a no charge item) on June 24, 1972, at a discounted price of \$14,553.00.

By letter of September 22, 1972, to the contracting officer Sacramento stated that it should have listed a deposit of \$1,300 in Item 3 of its bid in the same manner that it listed a similar deposit in Item 1; that it intended to prevent the Government from applying the concern's prompt payment discount to such deposits; that such deposit in Item 3 was erroneously omitted; and that its contract price for the Item should therefore be amended and raised by \$1,300. In support of its request, Sacramento also submitted several worksheets, including handwritten and typewritten work copies of its bid, and a copy of a Parts Price List of Teledyne Continental Motors Company, Sacramento's supplier of the remanufactured engines.

With respect to this information the contracting officer states that the worksheets show that the contractor did not include any deposit for the Item, and that the prices in the Parts List confirm the accuracy of the prices which the company used in computing its bid for Item 3. In view thereof, the contracting officer states that he believes the contractor made a bona fide mistake in Item 3 by failing to list the deposit as an extra item, and recommends that the contract price for the Item be increased by \$1,300.

A claim for relief of a unilateral mistake in bid alleged after award cannot be granted without showing that the mistake was so apparent as to have charged the contracting officer with notice of the probability of the error. B-161964, July 17, 1967. Assuming, for

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the purpose of discussion, that evidence of Sacramento's mistake was clear and convincing, we fail to see how the contracting officer could be charged with notice that the contractor's price for Item 3 was erroneous. In this regard the record shows that Sacramento submitted the only responsive bid for the requirement; that its unit price for Item 3 for the furnishing of new cylinders with the engines was \$400.00 more than its unit price for Item 1 without furnishing such cylinders; and that the contracting officer did not have any estimate for the additional cost, if any, involved in obtaining new cylinders for the remanufacturing work which was involved under Item 3.

In addition, to allow correction of a mistake in bid claimed after award, the evidence must conclusively establish the mistake, the nature of the mistake, and what the bid price would have been but for the mistake. B-165047, September 5, 1968.

With respect to the subject claim, we agree with the contracting officer's observation that the worksheets show that the contractor did not include any deposit for Item 3. We believe, however, that such fact does not conclusively establish that the contractor intended to list a deposit entry in Item 3 of its bid. In this regard, we note that the IFB did not require bidders to submit a deposit entry for either Item 1 or Item 3. In this circumstance, the absence of such entry in the worksheets for Item 3 could also indicate that the contractor did not intend to place a deposit entry in its bid for the subject Item. In view thereof, we cannot conclude that the evidence conclusively establishes that a mistake has been made, or what the bid price would have been but for the mistake.

Accordingly, we find no legal basis on the present record for payment to Sacramento of any amount in addition to the contract price. The file forwarded with the report of November 13 is returned.

Sincerely yours,

W. E. Tamm
Comptroller General
of the United States

Enclosure

The Honorable
The Attorney General