

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

B-177574

JAN 3 1972

Dear Mr. Donovan:

Reference is made to your letter of November 30, 1972, with which you enclosed a report of a mistake in bid alleged after award of contract No. H&M-21-72-21 to Disposowaste, Incorporated (Disposowaste) by the Center for Disease Control (CDC), Atlanta, Georgia. This matter was forwarded to our Office for a determination, in accordance with Federal Procurement Regulations (FPR) 1-2.406-4(i), as to whether the contract may be reformed.

The report states that solicitation No. 103-71 was issued on June 9, 1971, for the furnishing of supplies, equipment, and labor to pick up and dispose of waste from the premises of CDC in Atlanta and Chamblee, Georgia, from the time of contract award through June 30, 1972. Bids were opened on June 30, 1971.

The contract required use of specific types of equipment, and the bid forms provided spaces for bidders to insert their rental rates per month for this equipment, as well as their pickup rate per month. Disposowaste's bid under Item 1A contained a monthly rental of \$199 and a monthly pickup rate of \$49 for 40-cubic yard containers. In considering the bid, the contracting officer was not alerted to any discrepancy in the item bid prices. Since Disposowaste was the only bidder, it was awarded the contract on July 2, 1971.

Performance under the contract has now been satisfactorily completed. However, during the last month of the contract period, contracting personnel were notified that the contractor had invoiced, and payment had been made, throughout the contract period at a rate of \$49 per pickup (with approximately 4-1/3 pickups per month), rather than at the contract-stipulated rate of \$49 per month. On July 13, 1972, CDC notified Disposowaste that an adjustment would be made in the payment for its June invoice for the overpayments made on the previous invoices. Upon receipt of this notification, Disposowaste submitted a letter dated July 18, 1972, alleging that it had made a mistake in bid, and claiming it had first noticed the mistake upon receipt of CDC's July 13 letter. In its July 18 letter Disposowaste pointed out that in telephone conversations with the

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B-177574

procuring authority regarding the solicitation on the prior year's services, the difficulty of pricing on a flat monthly basis was discussed and agreement was reached to price the pickups of 40-cubic yard containers on a per load basis, and that it followed a similar procedure on the present procurement. Attached to this letter were a copy of the contractor's originating invoice for the instant contract and a copy of the working papers used by the contractor in calculation of its bid.

Your report points out that on page 6 of Disposowaste's bid \$49 was stipulated as the cost for each additional pickup of 40-cubic yard containers that might be required. You also indicate the contracting officer has stated that the contract for the same service with Disposowaste for fiscal year 1971 provided for a rate of \$40 per pickup, rather than \$40 per month, and that in view of this he should have been charged with notice of the probability of a mistake.

It is recommended by both yourself and the contracting officer that reformation of the contract be permitted, so as to allow a pickup rate of \$49 per pickup under Item 1A, rather than \$49 per month. In this regard the contracting officer states that such action would not be prejudicial to any other bidder, and that the corrected price is deemed to be fair and reasonable for the services performed.

FPR 1-2.406-4(c) provides that a determination to reform a contract "may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that a unilateral mistake made by the contractor was so apparent as to have charged the contracting officer with notice of the probability of the mistake." See also B-152435, November 8, 1963.

The record shows that a mistake in bid had been made by Disposowaste. The worksheets attached to its letter of July 18, 1972, evidence the fact that the contractor intended to charge \$49 per pickup. We also find evidence of a mistake from the fact that on page 6 of Disposowaste's bid, \$49 was stipulated as "the cost of additional pickups," and that the contract for the same service with Disposowaste for fiscal year 1971 provided for a rate of \$40 per pickup.

The contracting officer has stated that he should have recognized the possibility of an error in Disposowaste's bid, inasmuch as the extra pickup charge for this equipment, as shown on page 6 of Disposowaste's bid, was stated to be \$49. Furthermore, as stated, the contract with Disposowaste for the previous fiscal year stipulated the

B-177574

price rate as \$40 per pickup. We believe the combination of these facts was sufficient to put the contracting officer on notice of a probable error in the bid. See B-161964, July 17, 1967.

Accordingly, the contract may be corrected to reflect a rate of \$49 per pickup of the 40-cubic yard containers by Disposalwaste.

The file forwarded with your letter of November 30 is returned.

Sincerely yours,

R.F. KELLER

Deputy | Comptroller General
of the United States

Enclosure

Mr. John M. Donovan, Jr.
Director of Procurement and Materiel
Management, OASAM
Department of Health, Education
and Welfare