

DECISION

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

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FILE: B-183600

DATE: June 9, 1975

MATTER OF: American Society of Mechanical Engineers

DIGEST:

The Coast Guard negotiated a contract with the American Society of Mechanical Engineers (ASME) for the purchase of manuals. ASME's established policy of offering either membership or quantity discounts, but not both, was accepted by the requisitioning activity. However, in reducing the agreement to writing, the Coast Guard applied both the quantity discount and the member discount. ASME executed the contract without detecting the error. The facts presented are sufficient to prove mutual mistake, and reformation of the contract is accordingly allowed.

The Coast Guard has requested our approval of the proposed reformation of its contract DOT-CG-5047-A with the American Society of Mechanical Engineers (ASME) for sets of publications which comprise the ASME Boiler and Pressure Vessel Code.

The record shows that the ASME, which is the sole source of the Code, had published list prices for each volume. ASME members were entitled to a 20 percent discount from the list price. ASME also offered quantity discounts ranging from 30 to 40 percent of list price for large volume purchases. The membership and quantity discounts were alternative, not cumulative, a fact which was known to the Coast Guard requisitioning activity. The requisitioning activity's price estimate of \$31,500 was derived by subtracting a 30 percent quantity discount for Items 1 a. through h., of which over 100 copies each were needed, and by subtracting a 20 percent membership discount for Items 2 a. through m., of which from 1 to 3 copies of each were needed.

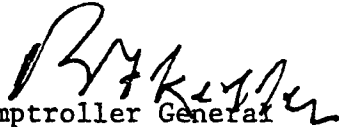
Although ASME initially proposed to furnish the Code at the nonmembers list price, after discussions with the Coast Guard, ASME agreed that the members discount would be applicable to the procurement. The Coast Guard then prepared a Standard Form 26, "Award/Contract" for the contractor's signature.

In preparing the Standard Form 26, the discounts were applied cumulatively to Items 1 a. through h., contrary to ASME's policy and the understanding of the requisitioning activity. For example, the nonmember list unit price of Item 1 a. was \$45. The Coast Guard was entitled either to the membership discount price of \$36 or (because it ordered 153 of these volumes) a 30 percent quantity discount from list, which would make the unit price \$31.50. The latter price was clearly more advantageous to the Government and was what the ASME intended to charge under its established policy. When the Coast Guard entered the prices on the Standard Form 26, however, the discounts were applied cumulatively. For Item 1 a., the membership discount was first taken, reducing the unit price from \$45 to \$36, from which a 30 percent quantity discount was next taken, bringing the price to \$25.20.

The ASME representative signed the contract without detecting the pricing error. In billing, ASME allowed either the 30 percent quantity discount or the 20 percent member discount, whichever effected greater savings to the Government. Upon receipt of ASME's invoices the Coast Guard discovered that the contract price was \$6,020.70 less than the total of the invoice prices.

A contract may be reformed where it is shown that by reason of a mutual mistake the contract as reduced to writing does not reflect the actual agreement of the parties, and it can be established what the contract was or what it would have been if a mistake had not been made. 39 Comp. Gen. 363, 365 (1959). The record before us indicates that the ASME had an established pricing policy of offering alternative and not cumulative discounts which had been communicated to and accepted by the Coast Guard, as substantiated by the method in which that agency computed the estimated contract price.

Accordingly, contract No. DOT-CG-5047-A may be modified, as administratively recommended, to reflect the true intent of the parties, through an increase in the contract price of \$6,020.70.


Deputy Comptroller General
of the United States