

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

FILE: B-184238

DATE: July 30, 1975

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MATTER OF: Capitol Aviation, Inc.

DIGEST:

1. Contractor alleging mistake in bid after award is not entitled to price increase where contracting officer had no actual or constructive notice of mistake prior to award. Variation of 13 percent between low and next low bid is not sufficient by itself to constitute constructive notice where broad range of bids are received.
2. Contractor is not entitled to price increase where cost of performance has become more expensive since there is no price escalation clause in contract.

This case involves (1) an allegation of mistake in bid by the contractor, Capitol Aviation, Inc. (Capitol) (now Cessna Aircraft Company - Capitol Zone), in contract (No. 14-16-001-544LE) awarded by the Fish and Wildlife Service (FWS) and (2) a subsequent request for an increase in price by Capitol based upon increased prices for parts and freight.

Bids were solicited by FWS on January 8, 1974, for a factory remanufactured aircraft engine under IFB No. SFW1-1243, and ten bids were opened on February 12, 1974. Capitol submitted the low bid of \$3,550 consisting of \$4,850 for the aircraft engine less \$1,300 for engine exchange credit. The next lowest bid was \$4,097 consisting of \$5,397 for the engine less \$1,300 exchange credit. The remaining bids after deduction of the exchange credit ranged from \$4,257 to \$4,912. The contract was awarded to Capitol on March 7, 1974.

After the award was made, Capitol alleged a mistake in bid and submitted supporting evidence to the contracting officer. Capitol claimed that it had used the wrong calculator tape in preparing its bid and that the intended bid was \$4,110 consisting of \$5,410 for the engine less the \$1,300 exchange credit. The evidence was submitted to the Director, Office of Management Services, Department of the Interior for a determination under FPR § 1-2.406-4(b). The administrative determination of September 9, 1974, found that there was not clear and convincing evidence to support the claim and that the contracting officer had no constructive notice of an error in the bid submitted by Capitol. The matter has now been submitted to our Office for review.

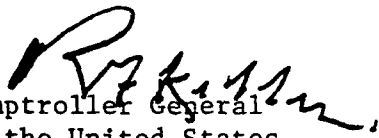
We agree with the administrative decision. Our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of the error prior to the award. 45 Comp. Gen. 700, 706 (1966). In this case, the mistake on the part of Capitol was unilateral and there was no actual notice of error prior to award. Further, it was the decision of the agency that there was no constructive notice of error in view of the proximity of the Capitol bid and the second low bid (second low bid was 13 percent higher than low bid).

Capitol contends that a 13 percent difference between the low and second low bid was significant in this case. There is no absolute test as to the significance of variances among bids in determining constructive notice of error but rather a test of reasonableness is employed. In this case, ten bids were submitted ranging from \$3,550 to \$4,912 after the deduction of the exchange credit. Where there exists such a broad range of bids, we do not believe that the 13 percent variance between the low and next low bid without anything more is sufficient to constitute constructive notice of error. See Sundance Construction, Inc., B-182485, February 28, 1975.

In addition to the claim of error, Capitol has requested relief in the form of a price increase to cover three increases in the cost of material and freight instituted since the time of the bid.

Where a Government contract contains an express stipulation as to the amount of compensation to be paid, and there is no price escalation clause, no basis exists for an increase in the contract price because the cost of performing in accordance with the contract has become more expensive. Genuine Motor Parts of Pennsylvania, Inc., B-182204, December 16, 1974.

Therefore, there is no legal authority for our Office to grant Capitol any relief.


Deputy Comptroller General
of the United States