

DECISION

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

100607

FILE: B-185668

DATE: March 4, 1976

98517

MATTER OF: Comfort Air Conditioning Company

DIGEST:

Contractor is not entitled to reformation or rescission of contract on basis of mistake in bid alleged after award where contracting officer had no actual or constructive notice of mistake prior to award. Variation of almost 20 percent between low and next low bid in itself is not enough to charge contracting officer with constructive notice where there is reasonable progression of bids and Government estimate is close to low bid.

The Department of Medicine and Surgery, Veterans Administration, has referred to this Office the mistake in bid alleged after award by Comfort Air Conditioning Company, Bethel Park, Pennsylvania (Comfort Air). The mistake is alleged in Comfort Air's response to an invitation for bids issued by the Supply Service, Veterans Administration Hospital (VA), Butler, Pennsylvania, on May 15, 1975, soliciting bids for labor, material, and installation of air conditioning equipment at the above-mentioned hospital. The matter is before this Office in accordance with Federal Procurement Regulations § 1-2.406-4(i) (1964 ed.).

The bids for this small business set-aside project were opened on June 19, 1975. Comfort Air was low bidder in the amount of \$19,445. Other bids were recorded at \$23,965, \$29,555, and \$32,965. The Government estimate for the job was \$20,000, while the cost range shown on Standard Form 20 of the IFB was \$25,000 to \$50,000.

The record shows that prior to any allegation of error, but after award, Comfort Air alleged that due to inaccuracies in the Government drawings it was impossible to perform the job for the price bid. By letter of August 6, 1975, received by Comfort Air on August 7, the VA advised that the Architect/Engineers had determined that with certain minor changes the drawings were satisfactory and the changes would result in a reduction of the sheet metal required.

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By letter dated August 7, 1975, Comfort Air requested reformation or rescission of its contract based on alleged errors made in estimating electrical and sheet metal ductwork labor and materials. In support of that contention, Comfort Air submitted, at the request of the VA, the original worksheet used to prepare its bid.

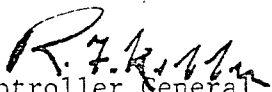
On the basis of the evidence submitted by Comfort Air, the Acting Hospital Director concluded that it was "questionable whether this could be considered a bona fide mistake * * *."

Where a bidder alleges a mistake in its bid that was not induced or shared by the Government, it must bear the consequences of such mistake, unless there was actual or constructive notice on the part of the Government contracting officer of the error before award. Vee See Construction Company, Inc., 54 Comp. Gen. 507 (1974), 74-2 CPD 373. Here, there is no evidence of actual notice to the contracting officer of an error in the bid. The test to charge the contracting officer with constructive notice of error in a particular case is one of reasonableness: whether under the facts and circumstances of the case, should a presumption of error have arisen in the mind of the contracting officer. Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123.

Differences between the lowest bid and next low bid ranging from 5 percent to 38 percent have been held insufficient, by themselves, to warrant charging the contracting officer with constructive notice of error. B-164845, June 18, 1969. See also Clark Manufacturing, Inc., B-182789, June 26, 1975, 75-1 CPD 388, where variations of between 20 percent and 30 percent were not held to constitute constructive notice. This is particularly true where there is a reasonable progression of bids as well as a Government estimate which closely corresponds with the lowest bid. Greg Houda, B-184580, September 12, 1975, 75-2 CPD 146; B-173417, July 29, 1971. The instant situation is one where there was a reasonable progression of bids and where the Government estimate was close to the lowest bid. There do not appear to be any other circumstances that would put the contracting officer on notice of a possible mistake in bid. Therefore, this Office cannot conclude that the contracting officer had constructive notice of a possible mistake.

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Accordingly, acceptance of the bid resulted in a valid and binding contract which fixed the rights and liabilities of the parties and the relief requested is therefore denied.


Deputy Comptroller General
of the United States